UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1991/SR.50
11 March 1991

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Forty-seventh session

SUMMARY RECORD OF THE 50th MEETING
(FIRST PART*)

Held at the Palais des Nations, Geneva,
on Monday, 4 March 1991, at 3 p.m.

Chairman: Mr. AMOO-GOTTFRIED (Ghana)

later: Mr. VASILENKO (Ukrainian SSR)
Mr. BERNALES BALLESTEROS (Peru)

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* The summary record of the second part of the meeting appears as document E/CN.4/1991/SR.50/Add.1.

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GE.91-11507/2967B

The meeting was called to order at 3.25 p.m.

ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS (agenda item 21) (continued) (E/CN.4/1991/5 and Add.1; 54 and Add.1; and 55)

1. Mr. GHEORGHE (Romani Union), speaking on behalf of his own organization and of the International Federation of Human Rights, said that it was important to continue the programmes under the regular budget and the Voluntary Fund which provided assistance to the parliamentary commissions appointed to draft the new constitutions of the Eastern European countries, since it was essential that those new constitutions and the national legislations should reflect the concerns of the United Nations to promote the human rights of persons belonging to national, ethnic and linguistic minorities. The Centre for Human Rights had already done some significant work by establishing standards and legislative models concerning minority rights.

2. The advisory services and technical assistance programme should disseminate information on human rights values, standards and mechanisms not only to persons in government and other positions of authority but also to the ordinary citizens of the country. Non-governmental organizations had an important part to play in spreading knowledge at the grass-roots levels. In the years to come, the Commission and the Centre should involve the NGOs to an increasing extent in the initiation and implementation of specific projects addressed to specific categories of people or areas of human rights. Governments could also draw more on the resources of NGOs in the design and execution of human rights projects. The guidelines prepared by the Centre for the assessment of requests for advisory services and technical assistance should explicitly include the criterion of NGO participation.

3. The Roma (gypsy) people were suffering discrimination and violation of their human rights in various countries, and a specific programme of advisory services was needed to meet their needs. A problem arose, however, because their communities were transboundary and human rights were usually monitored at the level of the individual State. Some aspects of the rights of nomadic peoples could not be realized within national boundaries and States. Transnational policies were therefore needed, which would require the co-operation of several Governments and NGOs.

4. He suggested that the Governments of European countries which had Roma populations in their territories should, either individually or as a group, request advisory services for the realization of Roma human rights and, with the help of the Centre for Human Rights, organize a seminar on the economic, social and cultural problems encountered by the Roma in different countries and thus address their situation at the regional level.

5. Mr. PERALTA (International Union of Students) said that the fact that the Commission was discussing the case of Guatemala under agenda item 21 meant that there was a premeditated plan to cover up the truth because, as both Governments and NGOs had shown during the session, human rights were being flagrantly and systematically violated in that country. To improve the situation, much more than advisory services, education, conferences and enactment of laws was needed. Strict international surveillance of the Government, the army and the police were required, and above all, the disbanding of the paramilitary groups and civilian self-defence patrols.

6. While Guatemala was being given advisory services, millions of Guatemalans were living in inhuman conditions, thousands had disappeared or had been murdered and many street children, orphaned by the repression, had been tortured and murdered. All of those acts had been perpetrated with complete impunity. On the other hand, none of the organizations fighting for respect for human rights received any United Nations assistance and they were the ones who should be receiving it.

7. At the very moment that President Serrano had been rejoicing that the case of Guatemala was being retained under item 21, and when he was promising that human rights would never again be violated, a female university student had been abducted by a group of armed men.

8. Furthermore, whereas the initial report of the independent Expert, (E/CN.4/1991/5) gave a fairly objective assessment of the situation, the second (E/CN.4/1991/5/Add.1) had recorded almost verbatim, the promises and arguments of the Government. Moreover, it did not include any of the specific petitions or appeals from the NGOs in Guatemala. Words and promises could not remedy the situation in the country, and from their experience, the members of people's organizations had no reason to believe in such promises.

9. The recommendation that a law should be enacted on the so-called voluntary civil defence committees was an ill-advised one because those bodies were not only unconstitutional but were used by the army to repress the population. The NGOs, in their work with the people's democratic movements to defend human rights and denounce violations thereof were not in any way illegal or unconstitutional. He begged the Commission to stand up for the defence of people's and human rights organizations in Guatemala.

10. The United Nations should not continue giving advisory services to a country like Guatemala without verifying the practical results. The serious and continued human rights violations there should be duly investigated, the more so as the judiciary in Guatemala was not independent. The Commission should once again give the independent Expert a very broad mandate, should pass a resolution which objectively reflected the human rights situation in Guatemala and should make it clear that, if the human rights violations continued, the case of Guatemala would be discussed under its agenda item 21.

11. Mr. RODRIGUEZ MEJIA (Andean Commission of Jurists) said that, all too often, the acts of violence in Colombia were ascribed to the drug traffickers and the Government and its officers were portrayed as the victims, who deserved unconditional support. To put things in perspective, there had been as many deaths in Colombia from political violence in 1990 as during the 18 years of military dictatorship in Chile. Of the eight persons per day, on average, who died for political or presumably political reasons, two were killed in clashes between the army and guerrilla groups, one in a "social cleansing" operation and five in the street or in their homes. Paramilitary groups and State agents, which had a virtually free hand to operate under the state of emergency and did so with impunity, were responsible for most of those cases.

12. The United Nations had been informed of the situation by the reports of the Working Group on Enforced and Involuntary Disappearances and the Special Rapporteur on Summary or Arbitrary Executions, after their visits to

Colombia, in 1988 and 1989 respectively. The Government of Colombia had paid little heed to the recommendations contained in those reports and the Commission had not duly monitored the situation in the country.

13. The Special Rapporteur's recommendation (E/CN.4/1990/22/Add.1, para.64) that steps should be taken to eliminate the climate of impunity of action and to curtail summary or arbitrary executions with assistance provided by the international community was a valid one. It could be carried out with the resources allocated to Colombia under the programme of advisory services. However that might be, urgent and immediate political action was needed and the most appropriate solution would be for the Commission to appoint an expert who would advise Colombia on the corrective measures to be adopted in the short run. He should be required to report annually to the Commission on his work and on his assessment of the situation.

14. In September 1990, the President of Colombia had said that his Government was willing to receive an international mission to supervise the fulfilment of any peace agreements reached with the groups still engaged in armed insurgency. Preparations for such a step could begin with the appointment of the expert by the Commission, who would work with the Colombian Government and people to deal with the crisis once and for all and report back to the Commission.

15. The debate in the Commission had revealed a consensus that, regardless of whether a case was dealt with under item 21 or item 12 of its agenda, the main concern was that the Commission should use the best means at its disposal to end the situation of serious human rights violations. The reports of the Special Rapporteur on torture (E/CN.4/1991/17, paras. 44-51) the Working Group on Enforced and Involuntary Disappearances (E/CN.4/1991/20, paras. 97-116) and the Special Rapporteur on summary or arbitrary executions (E/CN.4/1991/36, paras. 100-138) all proved that there was such a situation in Colombia. The least that could be expected was that the case of Colombia should be discussed under agenda item 21.

16. By appointing an expert to advise the country and report back to it, the Commission would be acting in the most responsible and decisive way to stop the daily and serious human rights violations in Colombia. It would also be in keeping with the statement in the report of the Secretary-General (E/CN.4/1991/55, para. 11) that the "advisory services and the technical co-operation activities assist Governments and may be a complement to, but never a substitute for, the monitoring and investigating activities of the human rights programme".

17. Mr. TEITELBAUM (American Association of Jurists) said that, while his organization welcomed the use of the programme of advisory services, it thought that its scope should be more clearly defined and its execution improved. The Secretary-General had rightly said in his report (E/CN.4/1991/55, para. 11) that advisory services might be a complement to, but never a substitute for, the monitoring and investigating activities of the human rights programme and that the provision of advisory services and technical assistance was not, of course, a way to reduce a Government's accountability for the human rights situation in its country and would not exempt it from scrutiny through the various procedures established by the United Nations.

18. In the past year, an independent Expert had, in accordance with Commission resolution 1990/80, examined the human rights situation in Guatemala and submitted an excellent report thereon (E/CN.4/1991/5 and Add.1). Unfortunately, the Commission had not drawn the appropriate conclusions from that report and had decided to discuss it under agenda item 21. The Commission should stick to the facts only and help countries to apply human rights standards. Human rights developments subsequent to the assumption of power by the new Government in Guatemala were far from encouraging, and his organization hoped that the Commission would, at the very least, renew the Expert's mandate on the same terms as the previous year, namely, to examine the human rights situation in Guatemala.

19. The programme of advisory services should be formulated and executed with the participation of the NGOs, because they represented the potential and actual victims of human rights violations. They knew what kind of advice a country needed and could give valuable pointers at the stage of programme formulation. They could also indicate the most pressing needs in respect of standard-setting. The courses given by experts on procedures for the defence of human rights should be open to the NGOs. Indeed, even, more than the Governments, they needed that kind of assistance, since they had infinitely fewer technical and financial resources and little knowledge of the rules and procedures needed to defend the victims of human rights violations.

20. Consequently, his organization felt that priority should be given to requests for advisory services from Governments which agreed to the principle of NGO participation at all stages. It proposed that a governing council be established for the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights. The council should not only manage the Fund but should also carefully examine each situation and project to determine the appropriate priorities. Consideration should be given as to how the NGOs could best be represented on that governing council.

21. Mr. IBARRA (International Indian Treaty Council) said that the situation of the indigenous communities in Guatemala, which comprised the majority of the population, was very disturbing. The latest report of the independent Experts on Guatemala (E/CN.4/1991/5 and Add.1) showed that their situation had, in fact, worsened.

22. According to paragraph 148 of the report, many people continued to be compelled to join the ranks of the civilian defence patrols. Persons who resisted were murdered. Counter-insurgency military operations included attacks on whole communities in the rural areas, their homes and crops, animals and places of worship being destroyed (para. 85). An immediate stop to such violations of the human rights of the indigenous Guatemalan population should be obtained through the advisory services programme.

23. His organization had, for many years, been denouncing the ethnocide taking place in Guatemala. During that time, coups d'état and elections had followed one another, new presidents had assumed office, but all the people had received were promises, while the ethnocide continued.

24. The Commission should develop objective criteria to decide whether the case of a country like Guatemala should be examined under the item of advisory services or whether it should be transferred to agenda item 12.

25. Thousands of children had been displaced and orphaned in the war and many of them were living in the streets. The advisory services should also examine the situation of those children, who were persecuted, tortured and executed by the security forces.

26. He hoped that future reports on the situation would, in addition to the promises of the Government and the references to the legislation being drafted, report on the direct or indirect impact of the advisory services on the population at large. He suggested that the Expert could usefully spend more time with the people's and human rights organizations, as they could tell him directly about the lives of the people.

27. In conclusion, he requested that, when visiting Guatemala, the Expert should devote enough time to visiting the rural areas where the majority of the indigenous population lived; that the Working Group on Enforced or Involuntary Disappearances should be asked, when it visited Guatemala, to report to the Commission on the number of disappearances in the rural areas, and that the advisory services programme should produce tangible results in respect of the right of life, the right to security of the person, the right to freedom of expression and the right to organize.

28. Mrs. PARKER (International Educational Development, Inc.) said that it was clear from the report of the independent Expert, (E/CN.4/1991/5 and Add.1) that the chief obstacle to the improvement of the human rights situation in Guatemala was the army and its counter-insurgency operations. The addendum to the report (E/CN.4/1991/5/Add.1) expressed the hope that the new Government would have the will and the capacity to exercise control over the military and the security forces. However, reports from Guatemala indicated that the repression had continued unabated after the inauguration of President Serrano in January 1991.

29. Her organization was therefore surprised that the addendum to the report made no reference to the continuing violence in Guatemala or to the fact that all the popular organizations mentioned in its paragraph 5 had requested him to transmit their demand that a special rapporteur be appointed by the Commission under its agenda item 12. It was hardly credible that, in the face of the worst situation of human rights violations on the American continent, political factors had once again prevailed and shielded the Guatemalan State as it tolerated and supported continued repression. The Commission had made a serious mistake, and her organization feared that its action would encourage the Guatemalan army to continue its repressive policies against the majority of the population.

30. She was confident, however, that all the parties genuinely concerned about the case of Guatemala would seek to draft resolutions in the Commission to halt repression in that country. It was very important that the deep concern voiced throughout the session should be reflected in specific criteria, against which it would be possible to judge, a year later, whether the new Government of Guatemala had complied with its current promises or not.

31. The appointment of a Special Rapporteur for Guatemala under agenda item 12 had, in fact, produced some positive developments in the past, while the independent Expert and the advisory services under agenda item 21 had resulted in a steady deterioration in the human rights situation. In view of the fact that the Commission had decided to keep the case of Guatemala under

item 21, her organization urged it to give the independent Expert on Guatemala the widest and strongest mandate possible. It urged, in particular, that the situation of armed conflict in Guatemala should be addressed more fully, with particular reference to the treatment of prisoners of war, humanitarian relief operations and the plight of the civilian population.

32. Mr. URRUELA PRADO (Observer for Guatemala), speaking in exercise of the right of reply, said that his delegation wished to correct a number of inexactitudes and untruths in statements made on behalf of certain non-governmental organizations. In the first place, it was indeed true that militant representatives of armed groups, including some who were parties to the Oslo Agreement, were attending the Commission's current session. It was no secret also that, for many years, the discussion in the Commission of the human rights situation in Guatemala had been hampered and over-politicized by the almost exclusive participation of certain private groups which supported - from abroad - the armed insurrection. Since the 1970s, moreover, the irregular forces in Guatemala had been employing external means as part of their strategy to seize power by force, as was well known to analysts such as Dr. Cesare Donato Sereseres and the independent Expert.

33. For that reason, his delegation welcomed the presence, at the current session of the Commission, of new non-governmental groups which genuinely supported the cause of human rights in Guatemala - in particular, the representative of the recently created Human Rights Office of the Archbishopric of Guatemala, Monsignor Juan Gerardi Conedera, who had addressed the Commission as a representative of Pax Romana. Reconciliation was essential if grave distortions in the discussion of human rights in Guatemala were to be avoided.

34. With regard to advisory services, the main areas in which those services were used had been: the Judicial Branch, the Indigenous Communities Commission of Congress, and the Office of the Procurator for Human Rights. Without going into details of the programmes, which was fully described in the Expert's report (E/CN.4/1991/5 and Add.1), he reiterated that entities such as the Ministry of the Interior, the Procurator-General's Office and municipal bodies could likewise benefit from them. Details of his delegation's proposals would be forwarded to the Centre for Human Rights.

35. Those services had been generating a domestic climate of tolerance and respect for human rights after many years of confrontation and polarization. His delegation therefore welcomed the non-governmental organizations new to the Commission, and hoped that they would continue their involvement with a view to solving, by means of dialogue and compromise rather than political and ideological confrontation, the country's human rights problems.

36. The Government of President Serrano was ready to collaborate with the Commission and appreciated the work of the non-governmental organizations, churches of any denomination, and other truly humanitarian, peaceful and non-sectarian bodies participating in the search for a peaceful, just and democratic solution in Guatemala.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SECOND SESSION (agenda item 19)

(E/CN.4/1991/2-E/CN.4/Sub.2/1990/59; E/CN.4/1991/47, 48, 50 and Add.1; E/CN.4/1991/NGO/13, 18; E/CN.4/Sub.2/1990/29 and Add.1, 42, 44, 46; E/CN.4/Sub.2/1990/SR.25; A/RES/45/164)

37. Mr. TURK (Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities), introducing the report of the Sub-Commission on its forty-second session (E/CN.4/1991/2-E/CN.4/Sub.2/1990/59), said that for some time the Sub-Commission had felt a need to further the dialogue with its parent body, whose guidelines were of paramount importance in its work; as a body of independent experts, the Sub-Commission had done its utmost to conform to them, and the Commission's views had been most helpful. Twice in the past, a Sub-Commission Chairman had introduced, in the Commission, a report on implementation of the Commission's guidelines; and the Chairman of the Commission's forty-sixth session had participated in the work of the Sub-Commission's forty-second session. The Sub-Commission functioned primarily as the Commission's think-tank for research and standard-setting, and also drew the Commission's attention to particular situations of serious human rights violations; in addition, it was trying to explore new forms of action, the results of which were reflected in the report, for protecting and strengthening human rights.

38. In the field of standard-setting, the draft declaration on the protection of all persons from enforced and involuntary disappearances, transmitted to the Commission with a view to submission to the General Assembly for adoption at its forty-sixth session, or the forty-seventh session at the latest, stemmed from hours of careful work by the Sub-Commission's working group on detention, involving a number of NGOs experienced in the problem of disappearances. He sincerely hoped that the draft would receive full support. In addition, the pre-sessional working group on indigenous populations had prepared a text which gave grounds for hope that the draft universal declaration of indigenous rights would soon be completed; the Sub-Commission recommended that the Commission should authorize that group to meet for 10 working days in 1991, in order to complete the draft. The sessional working group for the preparation of a draft declaration on the right of everyone to leave any country, including his own, and to return to his country had successfully begun its work.

39. In no other aspect of the Sub-Commission's mandate was the need for analytical faculty, expertise, independence and creative thinking as important as in the tasks reflected in the list or studies and reports mentioned in annex IV of the Sub-Commission's report. Most of the studies derived from the Commission's own decisions and guidelines, and the reports on some of them had been made available to the Commission, at the latter's request, during the current year. To mention but one of them, that on possible ways and means of facilitating the peaceful solution of problems involving minorities (E/CN.4/Sub.2/1990/46), currently entrusted to Mr. Eide, one of the Sub-Commission's most experienced members, re-emphasized one of the Sub-Commission's original mandates; it focused on analysis of practical experience, thus complementing the Commission's current standard-setting work without in any way duplicating it; and it was an attempt to help in the dialogue, necessary at international and domestic levels alike, for solving

some of the most difficult and urgent current problems. The effort should also help indirectly to decrease the amount of human rights violations stemming from unresolved minority problems.

40. With regard to the work of the Sub-Commission's pre-sessional working group on communications pursuant to Council resolution 1503 (XLVIII), the Sub-Commission had noted with satisfaction, during its forty-second session, the demonstrated willingness of Governments to reply to communications forwarded to them pursuant to Council resolution 728 F (XXVIII). The Sub-Commission had adopted by a clear majority, at its forty-second session, decision 1990/111 to suspend rule 59 of the rules of procedure of the functional commissions of the Economic and Social Council so as to allow for voting by secret ballot on proposals under Council resolution 1503 (XLVIII), as well as decision 1990/112 relating to a time-limit for consideration of communications under the same Council resolution. That action would help to enhance the efficiency of its work and improve co-operation with the Governments concerned.

41. The total number of 34 resolutions and 26 decisions adopted at the Sub-Commission's forty-second session showed a considerable decrease compared to some previous sessions; that and the frequent adoption of simple decisions instead of resolutions marked a welcome trend which should be pursued. As could be seen from paragraph 26 of his own report (E/CN.4/1991/48), decision 1990/105 on the provisional suspension of rule 59 of the rules of procedure to allow for voting by secret ballot on resolutions under item 6 of the agenda for the forty-second session had been adopted by a clear majority. The Sub-Commission had also decided, in resolution 1990/4, to recommend that a footnote should be added to rule 59 of the rules of procedure so that it would be understood that the Sub-Commission would vote by secret ballot on resolutions pertaining to allegations of human rights violations in countries. He hoped that the Commission would endorse that procedure at its current session.

42. Organizing a Sub-Commission session, which involved, inter alia, the contributions of 26 independent experts and of a growing number of observer States and NGOs - 97 and 105 respectively at the forty-second session - was a complex task; the growing number of participants added to the difficulties - although the increased co-operation provided a valuable source of information and other vital inputs, and the potential was far from exhausted.

43. One particularly heartening experience was the Canadian Government's constant contact with him during the situation of ethnic tension in Oka-Kanesatake and Kahnawake, near Montreal; the contacts had also involved the participation of the Chairman of the Sub-Commission's working group on indigenous populations and, through her, a number of NGOs. He thanked the Canadian Government for that remarkable co-operation, which he hoped would help to set a precedent.

44. The visit to the Sub-Commission's forty-second session, by the Chairman of the Commission's forty-sixth session was an excellent example of the contact between the two bodies which was so important. Among matters discussed had been details of how to implement the principles and guidelines contained in Commission resolution 1990/64, as well as the criticisms voiced, during the Commission's debates, about the Sub-Commission's work. The discussions were directly relevant to the work of the Sub-Commission's

sessional working group on ways to improve methods of work which began work as the forty-second session and which addressed methods of work in respect of the human rights violations discussed under item 6 of the Sub-Commission's agenda. A number of ideas had also been exchanged, including the holding of joint meetings of the two bureaux and mutual visits by the Commission and Sub-Commission Chairmen to each other's annual sessions, which might help to build an effective partnership and should be further studied.

45. The Sub-Commission was fully aware of the growing difficulties relating to its organization of work. More time must be devoted to in-depth consideration of studies and reports. Ways to put some agenda items on a biennial basis must be devised, duplication of work avoided and observers' contribution to debates better organized. Paragraphs 5-9 of his report (E/CN.4/1991/48) referred to the work carried out hitherto by the open-ended Working Group established pursuant to Sub-Commission decision 1989/104 to consider methods of work relating to item 6 of the Sub-Commission's agenda. He had high hopes for the Working Group's findings, which were expected at the Sub-Commission's next session. A complementary initiative, begun at the forty-second session and continuing after its end, related to a number of ideas put forward by some Sub-Commission members concerning better organization of work in general, and the contribution made by observers in particular. Informal consultations in that regard, involving Sub-Commission members, observer States and NGOs, was continuing between sessions; he was following progress closely and would report to the Sub-Commission in due course.

46. All such efforts had the aim, of course, of improving the Sub-Commission's contribution as a supplementary body of the Commission, composed of independent, impartial experts. The task, never easy, was particularly difficult at the current time, when the international community's demands on human rights bodies were growing while the requisite human and material resources remained meagre. The need to develop an effective partnership therefore remained one of the important challenges before the Commission and its Sub-Commission.

47. The CHAIRMAN thanked the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities for his presentation of the reports contained in documents E/CN.4/1991/2-E/CN.4/Sub.2/1990/59 and E/CN.4/1991/48, on which he invited the Commission members to speak.

48. Mr. GEBRE-MEDHIN (Ethiopia) said that his delegation welcomed the presence of the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and thanked him for his presentation of the two reports.

49. The Sub-Commission had made significant contributions as the Commission's expert arm and had proved a useful link between the United Nations and individuals or peoples in distress. His delegation wished to record its appreciation of the important role the Sub-Commission played. But it recalled its comments, at the Commission's previous session, on the way in which the Sub-Commission had of late begun to conduct its business and, in particular, on the duplication of work and intolerable degree of politicization. It had hoped, like other delegations, that the Sub-Commission, heeding the mounting criticism from its parent body, would take immediate remedial measures during its forty-second session. But the 36 summary records and the report contained in document E/CN.4/1991/2 gave no assurance of adequate efforts in that

direction; nor was there any sign that the Commission was prepared to follow up its injunctions. His delegation reiterated its reservations about the conduct of business and the tendency to become what had been referred to as a "mini-Commission".

50. After its consideration of agenda item 3, the outcome of the Sub-Commission's debate had reflected disagreement and uncertainty about its mandate. The current rapidly evolving world, and the consequent changes between individuals or society and the State, which often necessitated adjustments and clarifications, placed a good deal of pressure on the Sub-Commission to deal with every conceivable issue; even so, the undesirable consequence of that had been a proliferation of studies, resolutions and agenda items to which the Sub-Commission had not been able to devote sufficient time.

51. Another problem was the amount of time and resources consumed in procedural aspects in the consideration, under agenda item 12, of situations involving human rights violations. While admitting that a problem did exist, his delegation was disappointed to see, from the records of its forty-second session, the double standards applied to the various situations. His delegation did not question the merits of the issues or the experts' competence; but it deplored the lack of balance and the duplication of work in both the Commission and Sub-Commission.

52. At the current session, therefore, the Commission must act with determination, in its resolution, to reaffirm the Sub-Commission's terms of reference and clarify certain views expressed by some experts on the relationship between the two bodies and on the Sub-Commission's costly, senseless practice of duplicating item 12 of the Commission's agenda, as well as its growing tendency to treat matters considered in other forums. Procedural problems and duplication of work could be avoided if matters relating to item 12 of the Commission's agenda were considered by that body first; the Commission could, as it saw fit, allocate to the Sub-Commission topics for the latter to study in keeping with its mandate. His delegation saw no need to change the Sub-Commission's terms of reference; it would continue to give that body its fullest support and co-operation so long as it continued to view itself as an expert body, and nothing more, mandated simply to undertake studies and make recommendations to its parent body. Neither ad hoc Commission resolutions nor changing circumstances should form a pretext to change the Sub-Commission's role. And no Sub-Commission recommendations should be considered final until approved by the Commission or the intergovernmental body soliciting the study. An expert body and its recommendations could not be a substitute for an intergovernmental body and its decisions.

53. The strength of the right to the independence of experts, invoked now and again in the Sub-Commission, lay in its exercise, not the number of times it was voiced. His delegation was uneasy about the expediency of invoking rule 78 of the rules of procedure with a view to suspending rule 59. It would be more than ready to support that decision if it could truly serve to protect the experts' independence; but it still had doubts about how an expert, reassured by secret ballot voting, could be independent enough to go on record in the Sub-Commission's annals. His delegation hoped, at least, that there would not come a time when the Sub-Commission adopted a resolution claiming confidentiality for all its documents.

54. The Sub-Commission's attention should also be drawn to the quality of its studies and reports, and to how many responsibilities were given to the same individuals at one time. While not questioning individual experts' competence, his delegation was concerned about failures to submit reports and studies on time. The Commission, too, should make sure, before requesting the Sub-Commission to undertake studies, that the latter were indispensable and had not already been carried out by the Sub-Commission or another United Nations body. Politicization of the Sub-Commission was likewise a matter for concern. It would not be easy to deal with unless the Commission and Sub-Commission took a courageous look at their respective roles. The Sub-Commission, as a body of experts, should focus more on making studies and on addressing recommendations, based on accurate information, to the Commission. The Sub-Commission was neither a court of law to pass judgement on Governments, nor a medium to broadcast sensational stories of alleged violations. In that connection, the list of non-governmental organizations participating in the Sub-Commission's forty-second session included a number of subversive groups from various countries, masquerading as NGOs, with the devious intention of abusing and politicizing that body.

55. A review of the Sub-Commission's functioning had been on the Commission's agenda for some 10 years. Each year the Commission adopted resolutions to enhance the effectiveness of the Sub-Commission by ensuring that its work was in accordance with its mandate and competence. His delegation was frustrated at the fact that the review exercise had become a mere ritual and that, year after year, there were neither changes in the language of the resolution nor improvements in the Sub-Commission's functioning.

56. The Commission deserved criticism for having failed to demonstrate in a practical way its commitment to the strengthening and improvement of the Sub-Commission's work by not following up the implementation of its resolutions and recommendations to its subsidiary body. The fact that only a single meeting had been allotted to the issue at the current session was a reflection of the Commission's lack of preparedness to address the many problems referred to in the debate.

57. In his delegation's view, the recommendation to be made by the Commission, after its consideration of agenda item 19, should reflect in a meaningful way the concerns expressed by member States. It must also call upon the Chairman of the Sub-Commission to submit, every two years, a detailed report on the measures adopted by the Sub-Commission, in accordance with the Commission's recommendations, to enhance its effectiveness and intensify the co-ordination between the Commission and its subsidiary body. He noted with satisfaction the efforts made by the previous Chairman of the Commission who, in addressing the Sub-Commission at its forty-second session, had conveyed the views expressed in the parent body with regard to the Sub-Commission's functioning. If such an exercise was undertaken every two years, it could enable both bodies to assess their progress towards their desired objectives and also prevent the exercise from becoming a mere ritual.

58. Mr. ZAMIR (Bangladesh) said that the Sub-Commission continued to play an important role complementary to that of the Commission in promoting and protecting human rights. Having commended the Sub-Commission on the progress made during its forty-second session, he noted with interest the ongoing studies and reports listed in annex IV of the report of the Sub-Commission (E/CN.4/1991/2-E/CN.4/Sub.2/1990/59), in particular Nos. 5, 6, 16, 18 and 20.

He also noted with appreciation the Sub-Commission's work in new areas, including the movement and dumping of toxic and dangerous products and welcomed the adoption of Sub-Commission resolution 1990/7 on human rights and the environment.

59. With regard to the report of the Working Group on Contemporary Forms of Slavery, he believed that the root causes of the phenomenon required closer study; he hoped that the Working Group would take into account the preventive side of the issue, rather than focusing solely on protection and remedies.

60. The Sub-Commission's main role was to provide the Commission with expert analysis in order to enhance the quality of its work. While the Sub-Commission's reports were of immense value, its debates had become increasingly politicized over the years, one result being that the Commission, at the current session, was required to consider 22 draft resolutions and decisions adopted by the Sub-Commission. In his view, the Sub-Commission should reconsider its practice of forwarding an ever-increasing number of draft resolutions; the drafting of the Commission's resolutions should be left to the Commission.

61. If the Commission did not provide adequate and clear guidance to its subsidiary body, the result was duplication of effort. The Sub-Commission should carry out tasks which were better dealt with by independent experts than by government representatives. Rather than considering the situations in particular countries in exceptional circumstances, the Sub-Commission should deal with thematic studies, in which its members' expertise could be put to the most effective use in developing new international standards and strengthening existing ones. With regard to human rights violations, the Sub-Commission, while mandated by Council resolution 1503 (XLVIII) to deal with such matters, should draw the Commission's attention to its experts' opinions in a brief and concise manner.

62. The merits and shortcomings of the system of special rapporteurs deserved careful study and evaluation. Some delegations felt that the Sub-Commission was conducting too many studies, some of which overlapped with those of other bodies. More than 30 studies and reports were currently on its agenda, which meant that there could be very little meaningful in-depth discussion of them by the experts. The rationalization of the Sub-Commission's agenda and co-ordination with other organs appeared to be essential before a new study was initiated. Moreover, in the past, too many studies and reports had taken too long to complete or had never been completed, while others had failed to receive prompt or thorough consideration even after completion. He suggested that an open-ended working group should be established at the beginning of each session of the Commission to consider the report of the Sub-Commission and make suitable recommendations to the Commission. Such a method would bring the Sub-Commission's activities into sharper focus.

63. The work of preparing reports and studies did not appear to be evenly distributed among the Sub-Commission's members. Efforts must be made to involve more experts from the developing countries - particularly those of Asian origin - as special rapporteurs in the future.

64. Sub-Commission decision 1990/105 on the provisional suspension of rule 59 of the rules of procedure of the functional commissions of the Economic and Social Council was unfortunate and misplaced. The adoption of that procedure could seriously jeopardize the impartiality and objectivity of the Sub-Commission's members.

65. Mr. do AMARAL SOUZA NETO (Brazil) said that the first part of his statement was being made on behalf of his delegation and the second part on behalf of the delegations of Argentina, Brazil, Colombia, Mexico, Peru and Venezuela.

66. First, with regard to document E/CN.4/1991/2-E/CN.4/Sub.2/1990/59, he was convinced that the enormous amount of valuable work accomplished by the Sub-Commission warranted serious and detailed consideration by the Commission. He drew attention to Commission resolutions 1988/43, 1989/36 and 1990/64, which touched on particularly important aspects of the Sub-Commission's activities, underscoring the need for the Sub-Commission to consider changing some of its practices with a view to fulfilling its original mandate. He had listened with interest to Mr. Türk's statement and noted with satisfaction that some progress had been made towards that end; for example, the report under consideration referred only 7 draft resolutions to the Commission as compared with 14 the previous year. That, however, was only a beginning. He encouraged the Sub-Commission to continue its efforts to fully implement the guidelines given to it by the Commission.

67. With regard to draft resolution I referred to the Commission by the Sub-Commission, the Commission had already approved that resolution, with the support of his delegation. As for draft resolution II, concerning the addition of a footnote to rule 59 of the rules of procedure of the functional commissions of the Economic and Social Council, he said that his delegation had no objection to votes on resolutions pertaining to country situations being taken by secret ballot, and was therefore prepared to support the draft resolution.

68. With regard to draft resolution III concerning the peaceful and constructive solution of problems involving minorities, his delegation was prepared to endorse the Sub-Commission's request to the Special Rapporteur, Mr. Eide, to continue the elaboration of his study on the matter.

69. Turning to draft resolution IV concerning the preparation of a study on human rights and the environment, he had read with interest a note prepared by Mrs. Ksentini (E/CN.4/Sub.2/1990/12), outlining the approach to such a study. Mrs. Ksentini's work could make an original and positive contribution to the work of the Commission, provided that it adhered to the guidelines laid down in Commission resolution 1990/64; on that basis, his delegation would support the preparation of the study.

70. His delegation was likewise prepared to support draft resolutions V and VI, relating to the study on the right to a fair trial and the report on the strengthening of the independence and impartiality of the judiciary, respectively. Both studies dealt with different aspects of the administration of justice, a question with which his delegation was particularly concerned. In that regard, he understood that account would be taken of the economic difficulties which democratic developing countries might encounter in the area of the administration of justice.

71. With regard to draft resolution VII concerning the programme of action for the elimination of the exploitation of child labour, he supported the recommendation of the Sub-Commission to transmit the draft programme of action to Governments and specialized agencies for their comments, and hoped that, at its next session, the Commission would be able to give thorough consideration to the draft programme of action.

72. Turning to the second part of his statement, he said that one of the most important topics on the agenda of the Sub-Commission's Working Group on Indigenous Populations was the drafting of a universal declaration on indigenous rights.

73. In his view, the new international instrument must be adopted by consensus, which was likely to be no easy task. Indigenous populations inhabited countries which were at extremely different stages of development, so that what might be applicable to indigenous groups in a developed country might in fact be detrimental to the interests of such groups in a developing country. He therefore concurred with the view expressed in Commission resolution 1990/62 that international standards must be developed on the basis of the diverse realities of indigenous populations in all parts of the world.

74. In accordance with General Assembly resolution 41/120, the provisions of the proposed draft declaration must be rendered fully compatible with the existing body of international human rights law. Accordingly, the rights embodied in the declaration must not impair the enjoyment by indigenous groups of the rights conferred on them by existing instruments, and they must not conflict with the rights conferred on all other human beings by other international instruments.

75. Governments had so far played a limited role in the drafting exercise, which was natural, in view of the fact that government representatives had observer status at the Working Group's sessions. Governments would become more fully involved in the elaboration of the draft declaration when it reached the Commission and the General Assembly. The better the text submitted by the Working Group, the sooner it could be approved by Governments. To that end, he encouraged the Chairman/Rapporteur of the Working Group to take fully into account the comments submitted by Governments and the existing legislation on indigenous populations in various countries.

76. The draft declaration contained a number of generally positive articles, such as those establishing the right to preserve an indigenous cultural identity and traditions and the right of indigenous communities to maintain and develop their traditional economic structures and ways of life. However, the initial revised text and the three texts produced by the informal drafting groups contained provisions which were scarcely acceptable to most Governments, in that they might be construed as implying recognition of a right of indigenous populations to self-determination similar to that enjoyed by sovereign States. Further refinement and clarification were needed.

77. The delegations for which he spoke welcomed General Assembly resolution 45/164 proclaiming 1993 as the International Year for the World's Indigenous People. In their view, the Year should be an occasion to strengthen international co-operation in dealing with the problems faced by indigenous communities. The efforts and resources mobilized in connection with the Year must be materialized as projects and initiatives to improve the

welfare of indigenous populations all over the world, particularly in the areas of environment, human rights, development, education, health and so on. Within the United Nations system, the specialized agencies had a particularly important role to play in such activities. Their early involvement in the preparatory process was welcome, as were contributions by indigenous and other non-governmental organizations and voluntary contributions by Governments.

78. Mr. BURDEKIN (Australia) said that he attached importance to all facets of the work of the Sub-Commission's Working Group on Indigenous Populations.

79. With regard to the International Year for the World's Indigenous People, his Government was strongly committed to the need for such peoples, and the non-governmental organizations working with them, to be closely involved at the highest level in the planning, implementation and evaluation of projects for the Year. It was also essential to ensure that tangible results for indigenous peoples endured well beyond the Year itself. He therefore urged the Secretary-General, in preparing the draft programme of activities for the Year, to take into account the specific recommendations presented by and to the Working Group.

80. The International Year should play a major role in the world-wide process of education on the legitimate aspirations of indigenous peoples and the need for reconciliation. It was significant that the World Conference on Human Rights would also take place in 1993; in his view, the rights of indigenous peoples should be an important theme of the World Conference and the preparations for the Conference should be co-ordinated with those for the Year.

81. His country, like many others, believed that the drafting work of the United Nations in the field of human rights was substantially completed and that the international community must henceforth concentrate on implementation. There were, however, several areas in which important standard-setting work remained to be done, one of which was the rights of indigenous peoples. For that reason, he supported a draft declaration which would strengthen existing instruments in areas specific to indigenous peoples. He recognized that the draft declaration was more complex than many other human rights instruments considered by the United Nations. Without substantial indigenous participation in the drafting of the declaration, it would lack credibility. He therefore supported proposals for extended consideration of the draft declaration at future sessions of the Working Group, in the hope that the draft declaration would be well advanced by 1993.

82. In his view, all States with indigenous peoples should be held accountable by the international community for their treatment of such groups. His Government acknowledged that Australia's aboriginal and Torres Strait Islander peoples still suffered continuing disadvantage and injustice which must be addressed. Structures were being established to allow for more representative input by those groups, such as the Aboriginal and Torres Strait Islander Commission (ATSIC), on which aboriginal people and Torres Strait Islanders had democratically elected representatives from 60 regional councils across Australia. The ATSIC legislation was intended to ensure that aboriginal people and Torres Strait Islanders were responsible for determining their own priorities and implementing special programmes of assistance for their communities.

83. His Government also intended to introduce legislation to establish a National Council of Reconciliation, the purpose of which was to achieve social justice for aboriginal and Torres Strait Islander peoples and to embark on a campaign to educate the public about their history, cultures, dispossession and continuing disadvantage.

84. Over the next five years, his Government had committed itself to increase funds for health and infrastructure in aboriginal communities by $A 232 million. A number of major social and environmental issues had been publicly identified and were being tackled by the Australian Human Rights and Equal Opportunity Commission (HREOC).

85. The issue of aboriginal deaths in custody was deeply disturbing to all Australians. Relations between indigenous people and the police had emerged as a significant problem in the inquiry into racist violence by HREOC.

86. The World Council of Churches, which had just concluded its seventh assembly in Australia, had been critical of the problems faced by aboriginal and Torres Strait Islander peoples. His Government was prepared to acknowledge such criticism in the context of the substantial steps that had been taken in the past decade to redress injustices to indigenous peoples.

87. Mrs. FUCHS (Mexico) said that the draft declaration on the protection of all persons from enforced or involuntary disappearances adopted by the Sub-Commission constituted an extremely important step aimed at eliminating that practice through the implementation of the principles of the rule of law and the pertinent international provisions relating to the right to freedom and security of person and the rights of detainees.

88. Since 1978, the United Nations had devoted constant attention to the practice of enforced and involuntary disappearance and a new multilateral instrument would undoubtedly help to bring about its elimination. The draft declaration struck a balance between measures aimed at preventing the practice and the responsibility of the State to conduct an investigation and punish those responsible. The draft stipulated that exceptional circumstances or states of emergency could not be invoked as a means to justify the enforced or involuntary disappearance of persons. Her delegation would co-operate in the task of finalizing the draft.

89. A second initiative to which her delegation attached particular importance was the preparation of a draft universal declaration of indigenous rights. The elaboration of such a declaration was very complex, all the more so since it involved protecting and promoting the rights of indigenous peoples, both of individuals and of the communities in which they lived. Consequently, any instrument on the rights of indigenous peoples had to recognize that those rights acquired full meaning in the collectivity, such as the rights to respect for and development of their own culture, customs and specific forms of social organization. To that end, it was essential that Governments, indigenous peoples and non-governmental organizations should participate in the current stage of the work in order to clarify and give full coverage to the texts that served as a basis for the preparation of the declaration.

90. Her Government attached great importance to the holding in 1993 of the International Year for the World's Indigenous Peoples. On the basis of the recognition of the identity and cultural diversity of indigenous peoples, the international community had an opportunity to hear in their own words their needs, demands and expectations. Her delegation therefore considered that the participation of the indigenous peoples in the definition and implementation of the Year was fundamental.

91. The framework for international efforts to promote the well-being and defence of the rights of the child had been expanded with the Convention on the Rights of the Child and the holding of a Summit Meeting in favour of children. The draft programme of action for the prevention of the sale of children and child prostitution and child pornography in respect of which the Secretary-General had submitted an analytical summary of comments received (E/CN.4/1991/50 and Add.1) and the draft programme of action for the elimination of the exploitation of child labour were to be seen in that context. Children required special protection against abuses, abandonment and exploitation. To that end, measures were essential in the educational and social fields, together with legislative reforms whenever practice so required.

92. In conclusion, her delegation recognized the serious efforts made by the Sub-Commission with a view to rationalizing its working methods, which would enable it to discharge with greater effectiveness the mandate originally entrusted to it.

93. Ms. HEVESI (Hungary) said that her delegation welcomed the fact that the dialogue between the Sub-Commission and the Commission was about to be intensified with the aim of reaching common goals.

94. Her delegation noted with deep satisfaction the adoption of the draft declaration on the protection of all persons from enforced or involuntary disappearances. It attached particular importance to action in the Commission which would send a strong signal to all those responsible for disappearances.

95. With regard to the protection of minorities, her delegation welcomed the report by Mr. Eide (E/CN.4/Sub.2/1990/46) and welcomed the renewal of his mandate. In that regard, it continued to believe that there could be no democracy when minorities were persecuted.

96. Her delegation was encouraged to note the measures to strengthen and promote that right indicated in the preliminary report on the right to freedom of opinion and expression (E/CN.4/Sub.2/1990/11), submitted to the Sub-Commission at its forty-second session by the Special Rapporteurs Mr. Joinet and Mr. Türk, and wished to record its satisfaction that their mandates had been extended.

97. Two other issues were of topical interest: the right to a fair trial as well as questions regarding human rights and states of emergency were attracting the attention not only of experts but of all those concerned with safeguarding human rights and fundamental freedoms.

98. The right of everyone to leave any country, including his own, and to return to his country had been under consideration for some time. In her delegation's view, a closer study should be made of that right in view of the mass exoduses of people taking place in many parts of the world. In that context, her delegation thought that the recently established working group should pay close attention to the right to return.

99. In view of the above considerations, her delegation had become a co-sponsor of the draft resolution on the work of the Sub-Commission (E/CN.4/1991/L.52).

100. Mr. NOWAK (Austria) noted that the Sub-Commission had submitted a comprehensive report which contained no less than 34 resolutions and 26 decisions on a broad range of issues. In addition, it had continued its standard-setting activities, carried out studies in the field of economic, social and cultural rights as well as of civil and political rights, dealt with a number of problems related to the administration of justice, and discussed human rights violations in various countries. It was therefore not exaggerated to underline the Sub-Commission's role as a "think-tank" of the Commission.

101. With regard to the field of standard-setting, the most noteworthy achievement of the recent session of the Sub-Commission had been the adoption of a draft declaration on the protection of all persons from enforced or involuntary disappearances. Other instruments such as the draft universal declaration of indigenous rights, the draft declaration on the right of everyone to leave any country, including his own, and to return to his country, and the draft guidelines on compensation for victims of violations required further consideration by the Sub-Commission. His delegation attached particular importance to the protection of the rights of indigenous peoples and hoped that the draft declaration could be finalized during the next meeting of the Working Group on Indigenous Populations.

102. Another important activity of the Sub-Commission was the discussion on social and economic indicators as a means for a more effective monitoring of economic, social and cultural rights. In his delegation's opinion, that complex question should be pursued by the Special Rapporteur in close co-operation with the Committee on Economic, Social and Cultural Rights.

103. For many years, his delegation had placed particular emphasis on an improvement of both standard-setting and effective implementation in the area of the administration of justice. It was primarily in that field that the Sub-Commission had made substantial progress. In addition to finishing the draft of the proposed declaration on enforced or involuntary disappearances, the Sub-Commission had endorsed the proposal by Mr. Joinet to recommend to the Commission the appointment of a Special Rapporteur or a working group on the question of arbitrary detention. His delegation fully supported the recommendation to establish an appropriate machinery to prevent the widespread practice of prolonged administrative detention without judicial supervision. It also supported initiatives aimed at securing the full protection of habeas corpus in emergency situations. Another important initiative in that field - which also symbolized the improved East-West relationship - was the preliminary report on the right to a fair trial (E/CN.4/Sub.2/1990/34) prepared jointly by Mr. Chernichenko of the USSR and Mr. Treat of the United States.

104. At its previous session, the Commission had invited the Sub-Commission to consider the elaboration of model texts for national legislation in the field of the administration of justice. Unfortunately, the Sub-Commission had taken no action in that respect. In view of the numerous international instruments existing in that field, his delegation considered that the elaboration of model texts for translating those norms into the laws and practice of all States was of considerable importance. The Sub-Commission might consider establishing a working group for that purpose or entrusting one of its members with the preparation of a study on the matter. Another important question in that context on which the Sub-Commission might concentrate in the near future was the issue of impunity.

105. Although the Sub-Commission's achievements in the field of standard-setting and implementation seemed quite impressive, its methods of work required further improvement. His delegation appreciated the efforts by the Sub-Commission to strengthen the independence of its members and to restructure its agenda. In that connection, it fully supported Sub-Commission draft resolution II, which requested the Commission to recommend to the Economic and Social Council the addition of a footnote to rule 59 of the rules of procedure of its functional commissions, providing for the Sub-Commission to vote on resolutions pertaining to allegations of human rights violations in countries by secret ballot. Despite the fact that members of the Sub-Commission were independent experts, there had been repeated allegations that they were subjected to political pressure from their own or other Governments. Those experiences had prompted the Sub-Commission at its last session to suspend rule 59 temporarily in respect of votes on country resolutions. The Commission should therefore recommend a general rule allowing for a secret ballot on such delicate issues to the Economic and Social Council for adoption.

106. With regard to the reorganization of the Sub-Commission's agenda, his delegation also felt that the Sub-Commission should reduce the number of studies undertaken at the same time. For that purpose, the Sub-Commission might adopt a medium-term plan for studies and begin consideration of new studies only after the completion of others. In that respect, the Commission should, of course, refrain from requesting the Sub-Commission to carry out too many studies at once.

107. For a properly structured discussion of the studies prepared by members of the Sub-Commission, the appointment of a so-called rapporteur d'avis for every study seemed advisable and would certainly help to focus the discussion in the Sub-Commission on major issues, allow more meaningful comments by other members and improve the preparation of resolutions. The report of the rapporteur d'avis and a short summary of the background and discussion of major resolutions adopted by the Sub-Commission would also enhance the discussion in the Commission of matters referred to it by the Sub-Commission.

108. Finally, his delegation expressed its appreciation of the intensified dialogue between the Commission and its main subsidiary body. It considered that the information given by the respective chairpersons in accordance with Commission resolution 1990/64 was a major first step in co-ordinating the work of both bodies.

109. Mr. BLACKWELL (United States of America) said that the report of the Sub-Commission on its forty-second session (E/CN.4/1991/2) covered a wide range of subjects and included around 60 resolutions and decisions, some for the Commission, some for the Council and some that appeared to be purely for the benefit of the members who had drafted them. Much of that mass of material was of questionable value, while much of the Sub-Commission's first-priority work - the drafting, discussion and adoption of scholarly reports and human rights standards - remained unfinished. Something was wrong with the Sub-Commission. Given the increased number of marginal or duplicative resolutions and decisions adopted by the Sub-Commission, his delegation was led to believe that it had chosen to ignore Commission resolution 1990/64 on the work of the Sub-Commission.

110. The Sub-Commission was engaged in a large number of non-priority activities. While he did not deny that the Sub-Commission had a role in bringing urgent human rights situations in countries to the Commission's attention, it should certainly not waste its time discussing country situations already on the Commission's agenda. His delegation was dismayed to learn from the report of the Sub-Commission's Chairman that instead of moving towards a curtailment of discussions on country situations, the Sub-Commission was considering a global report on such situations. The United States produced such a report annually and encouraged other Governments and competent organizations to do so as well. However, it strongly opposed the Sub-Commission's assumption of such a task, which was not the purpose for which it had been established.

111. Nor had the Sub-Commission been established to act as a referee in property disputes. Yet that was what it had attempted to do in August 1990 when it had engaged in a discussion of what was essentially a land dispute involving a group of indigenous people. While his delegation did not question the fact that the dispute was important to the parties concerned, nothing could be further from the Sub-Commission's mandate than that dispute and one wondered whether the members of the Sub-Commission who had insisted on the discussion were motivated more by political than by human rights objectives.

112. The Sub-Commission had other truly important work to do. The prevention of discrimination and protection of minorities were issues of great contemporary significance and his delegation was pleased that the Sub-Commission had entrusted one of its members with the task of preparing a study aimed at finding practical models for peaceful solutions of minority problems. That study deserved the undivided attention of the Sub-Commission. However, what was disturbing was that the study came under item 18 of the Sub-Commission's agenda, which contained 19 items. He wondered whether that was an expression of the priority, or lack of it, which the Sub-Commission attached to resolving minority problems.

113. Prior to taking up the study on such problems, the Sub-Commission addressed such topics as AIDS, the environment, cultural property of indigenous peoples and treaties between States and indigenous peoples, which did not belong on the agenda of a body concerned with human rights. The Working Group on Indigenous Peoples should concentrate its efforts on drafting a declaration on the rights of indigenous peoples, which it had been established to do, instead of embarking on extraneous studies.

114. Governments and organizations grew weary of the requests that emanated from such studies. For example, the Sub-Commission resolution on cultural property requested all museums, universities and other institutions to prepare comprehensive lists of indigenous peoples' artifacts and recommended that Governments take the necessary action to ensure the return of those artefacts. He would like to know why the Sub-Commission engaged in such activity when the United Nations Educational, Scientific and Cultural Organization already had an Intergovernmental Committee for the Return of Cultural Property.

115. As a result of the study on treaties between States and indigenous peoples, lengthy questionnaires would be sent to Governments and other organizations requesting, inter alia, all records of relevant court cases. He would like to know whether resources would be expended to hire outside consultants for such a mammoth undertaking as processing those records, while the Special Rapporteur on summary and arbitrary executions lacked adequate assistance.

116. With such activities on the Working Group's agenda, his delegation wondered whether the draft universal declaration of Indigenous Rights would suffer the fate of the draft Declaration on the right of everyone to leave any country, including his own, and to return to his country. It had been almost 30 years since the Special Rapporteur, Mr. Ingles, had proposed, and the Sub-Commission had adopted, a set of draft principles for the latter declaration. As of 1990, the Sub-Commission had approved only one article in that declaration. He stressed that the flood of marginal work prevented the members of the Sub-Commission from pursuing that task to a conclusion.

117. The solution was to reduce the number of studies in which the Sub-Commission was engaged. A practical formula would be for the Sub-Commission to decide at its 1991 session that any study that had been under way for two years must be completed within the following 12 months. All new studies should be designated to last no longer than two years with the possibility of a one-year extension under compelling circumstances. The goal should be that at its 1995 session, the Sub-Commission would have no more than five studies under way.

118. In addition to squandering the time of the experts, the large number of non-priority studies drained resources from the budget of the Centre for Human Rights. It would be of interest if the Commission could receive a report from the Secretary-General on the costs associated with carrying out each of the Sub-Commission's studies for each of the past three years, along with projections on those costs for the next two years. The report should compare such costs with expenditures in other areas, such as technical assistance for promoting human rights and the processing of communications to the Centre for Human Rights concerning human rights violations. The Commission would thus be in a position to compare the expenditures on studies by the Sub-Commission with other major areas of human rights activities by the Centre for Human Rights. It could then decide whether to make recommendations for imposing limitations on either the size or proportion of the budget of the Centre to be used for studies by the Sub-Commission.

119. Referring to Commission resolution 1990/64, which strongly emphasized the need to preserve the independence of the experts on the Sub-Commission, he said that without the independence of its members, the Sub-Commission was truly a miniature Commission on Human Rights, a duplication which the United Nations system simply could not afford.

120. It was perhaps ironic that the Commission on Human Rights, composed of government representatives, should emphasize the need for the independence of the Sub-Commission's experts, since it was the Governments concerned themselves that infringed upon that independence. It would seem that some principles should be adopted to forestall government infringement on the independence of the experts. First, Governments should not nominate as experts persons holding government positions that served as direct and obvious inhibitions on the exercise of independent judgement. Secondly, Governments should not recruit Sub-Commission experts to serve on delegations to the Commission on Human Rights. Thirdly, Governments should never exert pressure on experts to influence their votes on decisions by the Sub-Commission and, in that regard, a judicious recourse to the use of the secret ballot could insulate the Sub-Commission from such pressure.

121. Mr. Vasilenko (Ukrainian SSR) took the Chair.

122. Mrs. SANTOS PAIS (Portugal) said that at its forty-second session the Sub-Commission had shown greater concern about improving its methods of work. With regard to the consideration of communications under Council resolution 1503 (XLVIII), the Sub-Commission had amended its decision 1989/102, reducing by two months the deadline previously established in order to give Governments the possibility of submitting their comments in respect of human rights violations. That decision by the Sub-Commission represented considerable progress and would help to ensure that the communications considered were duly taken up by the Commission. Her delegation also regarded as important the consultations undertaken with a view to rationalizing the Sub-Commission's agenda, grouping various subjects and allowing experts the time needed to discuss in depth the various questions submitted for their consideration. The reduction in the number of resolutions on human rights violations was a further example of that concern with rationalization.

123. With a view to protecting the independence of its experts, the Sub-Commission had maintained the use of the secret ballot, reflecting an approach better suited to the protection of human rights and ensuring a more objective evaluation of various situations.

124. In connection with the smaller number of resolutions, she drew attention to those concerning South Africa, the occupied Arab territories, Iraq and occupied Kuwait, the situation in the Islamic Republic of Iran, Guatemala, El Salvador and East Timor. The question of East Timor continue to be a pressing one and the Sub-Commission had recognized the continued existence there of human rights violations as well as restrictions on the access of non-governmental organizations to the territory.

125. A most interesting discussion had taken place in the Sub-Commission on the question of methods of assessing human rights violations, in the light of Commission resolution 8 (XXIII). In her delegation's opinion, an approach which involved an analytical compilation of situations, together with summaries of government replies and an evaluation by the Sub-Commission, would constitute an effective system for indicating the seriousness of situations and the need to find adequate solutions.

126. In connection with the question of the administration of justice and the human rights of detainees and with reference to the report by Mr. Joinet on the practice of administrative detention (E/CN.4/Sub.2/1990/29), her delegation shared his view that, following approval by the General Assembly of the Body of Principles for the Protection of all Persons under Any Form of Detention and Imprisonment, the time had come to implement those principles in order to prevent and report violations.

127. It was also necessary to consider, in the light of the Body of Principles, situations involving unlawful and improper deprivation of freedom. Her delegation hoped that the Commission would follow up the recommendations made by Mr. Joinet, by establishing machinery to investigate situations of detention that were arbitrary or incompatible with applicable international standards and principles.

128. Closely linked to that question was the implementation of international standards in the field of the human rights of young detainees. Her delegation hoped that distinct progress in that area could be reported in 1992, taking account of the replies and comments received from Governments and non-governmental organizations and in particular of the rules on the subject recently adopted by the Congress on Crime Prevention held in Havana. The progress made in studying the application of the death penalty to persons under 18 years of age would also be crucial, particularly now that the Convention on the Rights of the Child was in force in so many countries.

129. Her delegation attached special importance to the activities of the United Nations, which was being called upon increasingly to assume ever greater responsibilities in all parts of the world. There was consequently a need to ensure that United Nations staff, or persons acting under its authority, enjoyed full respect for their fundamental rights, privileges and immunities, security and independence. In that context, her delegation stressed the crucial importance of Mrs. Bautista's study and recommendations (E/CN.4/Sub.2/1990/30), particularly regarding the health of staff members, experts or members of their families who had been deprived of their freedom. It particularly supported the request that they should be allowed to receive the necessary treatment by a doctor approved by the United Nations and, as far as possible, freely chosen by the persons concerned.

130. Lastly, Mr. Despouy's study on states of emergency (E/CN.4/Sub.2/1989 and Add.1 and Add.2/Rev.1), addressed a subject that deserved increasing attention in view of the importance of protecting fundamental rights and of the temptation to abuse those rights when a state of emergency had been declared.

131. It was particularly important to proceed with the formulation of draft model provisions which States could take into account when passing legislation at the national level. In that context, habeas corpus should have its rightful place as an inviolable right and as a measure to be invoked, either by the person concerned or by another person, against any abuse of power, and to be determined by an independent and impartial legal authority.

132. Mr. ZHANG Yishan (China) said that his delegation had noted with satisfaction that at its forty-second session, the Sub-Commission had continued its careful consideration of racial discrimination and apartheid in South Africa and of the right to self-determination of the Palestinian people. The various resolutions it had adopted, its study of the realization

of economic, social and cultural rights and its decision to continue its consideration of that topic at its forty-third session, its work concerning the protection of women, children and indigenous people and its many ideas and suggestions were praiseworthy.

133. There were, however, a number of problems which the Commission must take effective, timely and appropriate measures to solve, taking account of views from various quarters. Firstly, unlike the Commission, the Sub-Commission was a body of experts whose primary concern should be to concentrate its limited human and financial resources and its time on the study of major and practical subjects concerning the promotion and enjoyment of human rights, to draft valuable studies and to put forward feasible suggestions to the Commission. There had in recent years been a blurring of boundaries and much overlapping in the work of the Commission and the Sub-Commission. There had also been an increasing tendency in the Sub-Commission to engage in political debate and to make wanton attacks on the domestic affairs of sovereign States; and the consequent replies had taken up much precious time, so that insufficient time had been left for a thorough discussion of issues of concern to the majority of countries, such as the right to development. Further, some valuable expert reports had been passed over in haste and without due consideration.

134. Secondly, there had been repeated instances of failure by the Sub-Commission to conduct its work according to the rules of procedure. At its forty-first session, it had suspended some of those rules when considering certain issues and had resorted to a secret ballot for passing draft resolutions. The practice had been repeated at the forty-second session, and certain members had strongly advocated that the rules of procedure of the functional commissions of the Economic and Social Council should be amended to enable the voting on issues discussed openly also to be conducted by secret ballot. The Commission must seriously consider the desirability of reaffirming the nature of the Sub-Commission's work and mandate and calling upon it strictly to abide by and implement the provisions relating to its agenda items.

135. Lastly, one of the essential prerequisites for the normal conduct of the Sub-Commission's work was to take seriously and have a proper understanding of the criticism and suggestions made by its parent body with respect to its work. Many useful proposals were made each year for improving the Sub-Commission's working methods and efficiency, but the extent to which they had been put into practice should be examined. There were still too many reports and an ever-growing number of conference documents, and no effective control was exercised over the participation of non-governmental organizations, some of which had failed to respect the time-limit for their statements or had spoken many times on a particular item under various pretexts. There was an abnormal tendency to allow any individual, under the name of a non-governmental organization, to participate in meetings and make statements, and the Sub-Commission's work had been impeded by such practices on many occasions. The undiminished trend towards politicization was even more worrying. None of those trends was appropriate for an expert group such as the Sub-Commission. Urgent steps should be taken to remedy that state of affairs, and he hoped that the constructive suggestions made at the current session would improve the Sub-Commission's work.

136. Mrs. GALVIS (Colombia) said that most of what she wished to say had already been said in the statement by the representative of Brazil on behalf of the Rio Group.

137. Preparations were being made for two important events for the protection and promotion of the human rights of indigenous peoples: the draft universal declaration of indigenous rights and the proclamation of 1993 as the International Year for the World's Indigenous Peoples, to be directed at education, health, the environment and human rights. General Assembly resolution 45/164 was the just recognition by the international community of indigenous cultures that had left their mark in various areas of the world prior to the unifying influence of technology and of the models of social and political organization. It offered States an opportunity to develop policies for meeting the needs of indigenous peoples in all aspects of life and establishing the necessary conditions to ensure that cultural pluralism was achieved without detriment to the identity and integrity of the indigenous cultural heritage. The Commission was required to prepare a programme of activities to promote the human rights of indigenous peoples. Every opportunity should be taken to carry out programmes that would strengthen the historical, cultural, social and political values of those peoples.

138. Intercultural exchanges were one of the most important aspects of contemporary democracy. The celebration of the International Year for the World's Indigenous Peoples would be an occasion for confirming the cultural pluralism and rights of minorities and for evaluating the contributions made by the various cultures and the lessons to be learned from the wealth of their languages, their closeness to nature, their forms of social organization, their traditions and their legends. The human rights activities for the International Year would demonstrate the validity of their rights and prerogatives and their responsibilities as citizens with full rights.

139. Colombia had been carrying out an indigenous policy covering land distribution, respect for traditional indigenous organizations, development of bilingualism and promotion of fundamental rights. A special training programme for indigenous teachers had been carried out to enable them to assume responsibility for the education of their children and young people. Indigenous men were exempt from military service so that they would not thereby suffer any cultural transformation and would not be uprooted from their community. A programme to promote their rights and the laws for their protection was being developed. The draft universal declaration of indigenous rights being prepared by the Sub-Commission should form the basic document for promoting the human rights of indigenous peoples in 1993. Her delegation hoped that agreement could be reached on the drafting of a balanced document so that the declaration could represent a marriage of the interests of the indigenous peoples and the interests of States. Her delegation had noted with concern that the Sub-Commission documents on the issue contained ideas that were not in conformity with the integrity and unity of the State. Careful analysis should be made of some of the ideas that Governments found it difficult to accept because they gave rise to ambiguous considerations of autonomy. States were unable to accept the concepts of self-determination and of ownership of the subsoil and natural resources in a universal declaration, since they infringed their sovereignty and unity. Neither the indigenous peoples nor the participants in the Working Group had any intention of making the declaration an obstacle to relations between the groups concerned and the established institutions.

140. The kind of declaration Colombia needed, and which it was hoped would be adopted in 1993, was one that would establish the essential principles whereby the meeting of cultures would be recognized as necessary and healthy for democracy, and one that would encourage continued efforts to achieve the overriding objective of restoring peace and guaranteeing social justice for all Colombians and their right to live together in their different ways.

141. It would be extremely useful if the Sub-Commission, at its next session, could engage in a cordial and thorough dialogue on those topics in order to ensure the adoption of a universal declaration on indigenous rights when the International Year was celebrated in 1993. Her delegation requested the Centre for Human Rights to pay due attention to the discussions of the Working Group for that celebration and in particular to provide for simultaneous translation into Spanish and for the timely issue of documents in that language so that indigenous representatives from her region could express their views. The co-operation of the Centre for Human Rights in the celebration of the International Year would also be particularly important for the co-ordination of activities and dissemination of information. Her delegation welcomed the suggestions made by the Working Group on activities that might be recommended as a minimum programme of action for the International Year.

142. Mr. CHADHA (India) welcomed the report of the Sub-Commission on its forty-second session and the constructive and co-operative atmosphere that had characterized its meetings. The Sub-Commission was unique in its nature and role. As an independent body of experts, it was required to make a specialized contribution to the Commission's activities and thereby to the United Nations system as a whole, and it should serve as a think-tank for the Commission. Over the years, interesting new ideas on a wide variety of human rights related issues had been generated in the Sub-Commission, and his delegation hoped that that trend would continue. That body should supplement and complement the standard-setting and deliberative work of the Commission itself.

143. The view was often expressed that it had strayed from its original mandate of undertaking studies and making recommendations to the Commission concerning discrimination and the protection of minorities. At earlier sessions of the Commission, some delegations had expressed their concern at what they perceived to be a gradual but steady enlargement by the Sub-Commission of the scope of its work, and similar questions had been raised at the current session. His delegation shared those anxieties to some extent. The Sub-Commission should ensure that it did not stray into areas that could more properly be dealt with elsewhere in the United Nations system. It had not, however, been solely responsible for the gradual enlargement of its role. The Commission itself had been treating its mandate as a broad one and had been enlarging it gradually but perceptibly. Both bodies must remember that it had a specialist, not a general, role. By spreading its attention thinly over a large number of issues, its vital contribution could be weakened. It was a specialized body that was required to prepare studies for the Commission, and any particular study which the latter required should be entrusted to it. It was equally necessary to ensure that it was not overburdened, and its agenda, which was currently overloaded, might need to be streamlined. Consideration should be given to discussing more items on a biennial basis.

144. The Sub-Commission was not intended to be a governmental body, but it must combine independence and expertise, and it could fulfil its role only when Governments took every possible care to ensure such independence. Its credibility and effectiveness as an independent human rights body called for the nomination, as members and alternates, only of individuals with genuine expertise in the field of human rights who could act independently of their Governments.

145. The issue of independence was linked to the question as to whether or not a secret ballot should be held on resolutions concerning human rights violations in various countries. If a Sub-Commission member was a part of the government establishment of his country, he would vote on the same lines as that establishment regardless of whether the ballot was public or secret. The real issue, therefore, was the degree of independence which the experts enjoyed, and not the nature of the voting.

146. Much could be achieved through dialogue, co-operation and a sense of purpose, and his delegation therefore attached importance to the ongoing dialogue between the Commission and the Sub-Commission, which had made a substantial contribution to the promotion of human rights and fundamental freedoms under United Nations auspices. It was confident that that body would review and adjust its functioning to the emerging requirements, several of which had been amply highlighted during the current discussion.

147. Mr. ROA KOURI (Cuba) said that his Government attached particular importance to the Sub-Commission's work. As the only subsidiary body of the Commission, it initiated many kinds of action which the Commission had to analyse year after year. Its status as a highly technical body also justified the attention of the Commission, which should take the necessary measures to preserve the existing high quality of the Sub-Commission's work and the highest possible technical level, independence and objectivity of its experts. If the independence of the Sub-Commission's 26 members in its discussions, voting and general operations was lost, that would seriously limit its enormous potential contribution to the wide-ranging tasks of the United Nations in promoting the full realization and protection of human rights for all individuals and peoples.

148. His Government was unable, however, to accept the argument underlying draft resolution II in the report of the Sub-Commission on its forty-second session (E/CN.4/1991/2-E/CN.4/Sub.2/1990/59) entitled "Footnote to rule 59 of the rules of procedure of the functional commissions of the Economic and Social Council" which, in essence, took such independence to mean the capacity, or even obligation, to vote by secret ballot on all "resolutions pertaining to allegations of violations of human rights in countries". Since the practice of deciding each year to proceed in that way was a very recent one, the argument, if taken to its logical conclusion, would mean that all such resolutions in the past were defective since they had been adopted without the protection of a secret ballot. His delegation was unable to accept that unrealistic logic.

149. In defence of the draft resolution, it had been alleged that experts had been besieged and subjected to intense pressure by Governments and other bodies in an effort to influence them in favour of their views on particular situations. It was perfectly legitimate for Governments and non-governmental organizations to adduce any arguments they might have to justify their

respective positions. It was the duty of the experts to encourage such dialogue with all bodies that could show the different facets of a particular subject. It was a gross exaggeration to say that such action could be detrimental to the independence of an expert. Furthermore, the supposition that members of the Sub-Commission might change their convictions because of pressure placed on them by States was not warranted by the facts and failed to do justice to the international respect they deserved.

150. There were further arguments against the Sub-Commission's initiative, however. On two occasions, the Legal Counsel of the United Nations had indicated that, in his Office's opinion, it was appropriate to hold secret ballots only if the decision to hold a secret ballot had the agreement of all its members or the matter under discussion was comparable to an election. Neither of those conditions applied in the case under consideration.

151. The procedure proposed to the Economic and Social Council through the Commission was clearly anomalous. To make any substantial modification by simple majority vote to one of the most important rules of the rules of procedure of the functional commissions would certainly not be the most appropriate procedure. If it was considered that the Sub-Commission's rules of procedure were inappropriate in the light of its status as a body of independent experts, the rational course would be to seek the adoption of new and more appropriate rules. The independence of the expert members of the Sub-Commission was assured by other factors, including the respect of the Government that had nominated them, their technical ability and their professionalism. The opportunity for an expert to express his views in public on a particularly delicate question was one of the best weapons he had to show his independence. A secret ballot, on the other hand, could create more practical problems than it solved. It was in the Functional Commissions, which were intergovernmental bodies, and not in the Sub-Commission, that effective pressure might be exerted.

152. His delegation had submitted a draft resolution (E/CN.4/1991/L.71) requesting the Sub-Commission to consider the matter again at its forty-third session and to propose a more comprehensive approach.

153. His Government had taken due note of the work of the various working groups established by the Sub-Commission, and agreed that they were useful instruments for the full development of the Sub-Commission's potential. The work carried out by the Working Group on Indigenous Peoples was particularly relevant and his delegation hoped that its priority task of preparing a universal declaration on indigenous peoples would be completed as soon as possible with the full co-operation, through a constructive dialogue, of all Governments and indigenous organizations. The Working Group on Detention, which in August 1990 had completed its preparation of the extremely important declaration on enforced or involuntary disappearances, was also praiseworthy.

154. The Sub-Commission should make a major effort in the near future to deal with the problem of economic and social rights. The situation of children, adolescents and women, and the question of such unfavourable trends as the privatization of prisons, also deserved its attention. Special studies were required on some basic aspects of those problems. His delegation was ready to contribute to the Commission's efforts to encourage such work in the Sub-Commission.

155. Mr. MARANTZ (Canada) said that his delegation welcomed the report of the Sub-Commission on its forty-second session and commended that body on its efforts to promote and protect human rights. Among its many important efforts, he wished to highlight one example. Since 1989, when the United Nations Convention on the Rights of the Child had been adopted, children's issues had rightly moved to the forefront of the international agenda, and the World Summit for Children, which had taken place in September 1990, had been the highlight of that development. The Sub-Commission's Working Group on Contemporary Forms of Slavery had for some years devoted much of its efforts to children's issues, as had the Sub-Commission itself at its last session. The draft programme of action for the elimination of the exploitation of child labour, formulated by the Working Group, was before the Commission in draft resolution VII in the Sub-Commission's report. His delegation welcomed that initiative in an area that required urgent action at the national and international levels.

156. The last session of the Sub-Commission had also been characterized by enhanced efforts to co-ordinate that body's work with the work of the Commission. His delegation wholeheartedly welcomed the important dialogue that had been initiated between the Chairman of the Commission and the Bureau of the Sub-Commission, and sincerely hoped that those efforts would be continued. The United Nations had too few financial and human resources to allow of duplication of human rights efforts, and only through concerted and co-ordinated action could such duplication be avoided.

157. A further area in which some progress had been made but greater efforts were needed concerned the studies initiated by the Sub-Commission. That body had done some of its most important and lasting work in that area, but in recent years many studies had been initiated before others had been completed, and a number had also been approved by the Sub-Commission without its members having an opportunity to examine and comment on them. The value of the Sub-Commission's work depended on its ability to reflect a consensus of views representing a variety of political, economic, social and cultural backgrounds. His delegation therefore urged its members to act in a more concerted way, thus enhancing its contribution to the efforts for protection and promotion of human rights.

158. He particularly welcomed the contribution of the Chairman/Rapporteur of the Working Group on Indigenous Populations to the Sub-Commission's report. Progress had been made under her leadership in the formulation of principles concerning the rights of such populations. His Government would comment separately in the Sub-Commission on the various texts that had been prepared so far and that were expected to lead to a universal declaration of indigenous rights. A specific result of the Working Group's discussions could be seen in the resolution entitled "International Year for the World's Indigenous Peoples". Through her patience, the Chairman/Rapporteur of the Working Group had created an environment in which indigenous organizations and non-governmental organizations had been able to work co-operatively with States having a direct interest in the indigenous peoples of the world. His delegation acknowledged the contributions of the various organizations to the resolution.

159. Three sessions earlier, the Commission had approved the task of the Special Rapporteur in studying treaties, agreements and other constructive arrangements between States and indigenous populations. His delegation urged

that every possible assistance should be provided to enable the Special Rapporteur to complete that complex task. His Government would shortly reply to the questionnaire distributed during the Working Group's session and urged other States to do so.

160. The importance of subsistence activities of indigenous populations had been recognized by the Working Group on Indigenous Populations; yet some extremist groups continued to press for a total ban on the use of furs. They should know that a successful ban would deprive those populations of their livelihood and also of their strong ties with the land, the core of their cultural identity. He was pleased to acknowledge that some groups of activists had now come to recognize the success attained in developing and adopting humane trapping methods. Some had even acknowledged that, in wishing to spare wildlife, they had done even more harm to those whose lives were so intricately bound up with nature.

161. The Government of Canada supported an extension of the working time available to the Working Group. If the objective of submitting a draft declaration to the Sub-Commission by 1993 was to be attained, then its Chairman/Rapporteur must be afforded the means to assist her in that purpose. His delegation was pleased to note that the number of working groups would revert to one, and that she would take due account of the need to reduce expenditures.

162. His Government remained pleased with the work of the Voluntary Fund for Indigenous Populations. Access to the Fund afforded an opportunity for indigenous parties to represent themselves in Geneva, and for an appreciation of the value of their cultures and forms of social organization. He appealed for support for the Fund, to which Canada hoped to continue to contribute.

163. At its previous session the Sub-Commission had expressed interest in the conflict between the Mohawk people and the Governments of Quebec and Canada. That dispute had taken place against the backdrop of the requirement, repeatedly stressed in the Commission, that the law must be applied equally to all and must be respected by all. He was pleased to say that throughout those events, the objective of arriving at a peaceful, negotiated settlement had been foremost in the minds of the Governments, and had been achieved without abrogating the civil and political rights of any parties to the conflict. A few days previously, a framework agreement had been signed with the Mohawk people of Kanesatake, designed to establish the parameters for the negotiation of land issues, economic and social development requirements and self-government.

164. Those negotiations were being undertaken against a larger backdrop encompassing all the aboriginal peoples of Canada. On 25 September 1990 the Prime Minister had announced a "Native Agenda", including acceleration of land claims; improving economic and social conditions on reserves; legislative measures to enhance aboriginal self-government and legislative alternatives to the Indian Act (with the agreement of those peoples coming under the provisions of that Act); and an attempt to address aboriginal peoples' concerns about their fundamental place and role in Canada, in which they benefited from unique constitutional rights in addition to those enjoyed by all Canadians.

165. The Government of Canada had sought consistently to improve mechanisms for addressing situations where rights were in jeopardy, and had favoured inter-sessional means for addressing those problems while they were current. Thus, it would be well if other countries were to follow the example set by Canada in volunteering information as a means of satisfying experts that conflicts were being resolved by the most peaceful means available.

166. Mr. KOSSENKO (Union of Soviet Socialist Republics) said that his delegation saw the basic purpose of the Sub-Commission as two-fold: first, to feed the Commission with expert conclusions; and secondly, distancing itself from politicized discussions, to work out methods for revealing new or following up known human rights violations and ways of averting them. The reports by the Sub-Commission's experts were very important in that regard.

167. Experience showed that the Commission's instructions to the Sub-Commission on the choice of subjects for the reports did not give the desired results. Rather than rigidly regulating its activities, the Commission could ask the Sub-Commission to study a situation at its next session and to come up with concrete proposals. That work would have to be based on two principles: first, care to avoid duplication of work, and secondly, a sharp reduction in the number of resolutions.

168. The problems encountered by the Commission, and indeed by the Sub-Commission, in connection with the work of the subsidiary body, must not conceal the fact that its activities were becoming more effective. The Sub-Commission was quicker than the Commission to renounce moribund stereotypes. His delegation was impressed by the fact that many experts had been critical when assessing legislative provisions or practice in their own countries. That practical demonstration of a rejection of dual standards and selectivity - a scourge of many United Nations human rights organs - was an example that members of the Commission could usefully emulate.

169. A new element in the Sub-Commission's activities was its swift reaction to urgent human rights situations. Examples were its actions in connection with the situation in occupied Kuwait, and with the situation of the Mohawks in Canada. His delegation noted with satisfaction a trend towards a better distribution of investigative tasks among members of the Sub-Commission. However, there was still a long way to go before real equality was achieved. The experts' personal areas of expertise could doubtless be taken into account, but the prevailing criterion whereby a member of the Sub-Commission who had put forward an idea for investigation was almost inevitably entrusted with following it up, could not but conflict with the principle of fairness. That situation, incidentally, hampered the work of members of the Commission in assessing the work of the Sub-Commission's experts when re-electing them, which, incidentally, was one way of strengthening the independent status of the Sub-Commission's members.

170. In a context of restricted resources, the readiness expressed by experts to undertake initial investigations without remuneration was an important achievement of the Sub-Commission.

171. All the signs pointed to increased voting by secret ballot in the work of the Sub-Commission, although his delegation was concerned that insufficient consideration had been given to the legal basis for the procedure.

172. With regard to the ideas circulating on the possible preparation by the Sub-Commission of a global report on the human rights situation at world level, his delegation abstained from comment at the present juncture, relying on the wisdom and professionalism of members of the Sub-Commission, who must themselves determine the best course of action. On that decision might depend the effectiveness of the work of the Commission, and of the whole United Nations system in the field of human rights.

173. In his delegation's view, the time was ripe for a reform of the Sub-Commission. The fact that, on the testimony of the experts themselves, studies were not analysed in detail, was cause for concern. Some good ideas had been put forward, inter alia, by Mr. Joinet and the non-governmental organizations. At its next session, the Sub-Commission might usefully prepare recommendations to serve as the basis for a possible reform, and present them at the next session of the Commission. His delegation hoped that, as a result of the active search for improvements to the Sub-Commission's methods of work, its great potential could be fully exploited in the near future.

174. Mr. FULDA (Germany) said that, in a world in which respect for human rights was far from being achieved, it was important that the Sub-Commission should be able to fulfil its mandate of assisting the Commission on Human Rights, at the same time serving as a think-tank and an independent observer of human rights developments worldwide. The independence of members of the Sub-Commission should enable it to contribute to the common task of both bodies new ideas and research combining academic skill and political assessment. That common task was to fill loopholes in the area of standard-setting and to foster better implementation of existing standards by transforming international human rights law into national legislation and administrative practice. His delegation therefore called upon countries to nominate to the Sub-Commission only persons meeting those criteria.

175. Given their common task and common responsibility, the Commission and the Sub-Commission must maintain the best possible channels of communication. His delegation thus welcomed the recently established procedure for mutual provision of information through their respective Chairmen. That dialogue had already produced significant results, the most important of which was the renewed discussion among members of the Sub-Commission themselves as to how they could best discharge their responsibilities. His delegation urged all members of the Sub-Commission to participate in and to intensify the discussion on its role and its conception of itself. His delegation attached great importance to the independence of the Sub-Commission, and was thus confident that its members would agree on reform of its methods of work without strong intervention on the part of the Commission.

176. In drafting the resolution on the work of the Sub-Commission, his delegation had not sought to conceal its own assessment of the current state of affairs which coincided with criticisms voiced by a number of members of the Sub-Commission itself. In his delegation's view, an expert body should devote most of its time to exchanges of views among experts. However, the large number of studies under way hampered in-depth communication between authors and their colleagues. The Sub-Commission must thus streamline and rationalize its work to maintain effectiveness and performance, avoiding duplication of work with other human rights bodies. It should concentrate on essential issues and studies that were important to the promotion and protection of human rights, and avoid a proliferation of studies drawing

heavily on the scarce human and financial resources available. The number of studies, as well as the time devoted to finalizing them, should be reduced, thereby enabling all members of the Sub-Commission to participate in in-depth discussion. The Sub-Commission should establish procedures to ensure the earliest possible completion of studies.

177. His delegation noted with satisfaction that the Sub-Commission had itself identified those matters as areas of concern, and had already taken initiatives to respond to them. It supported all reforms intended to strengthen the Sub-Commission, and in particular, intensified dialogue between the Commission and the Sub-Commission.

178. Mrs. CASTRO-MULLER (Philippines) welcomed recent developments in the work of the Sub-Commission: the opening of direct dialogue with the Commission and the possibility of joint meetings; its consideration of new developments in the field of human rights, particularly the question of human rights and the environment; and its decision to continue the work of the working group to prepare an overview and an analysis of proposals made to enable it to discharge fully its responsibilities in dealing with human rights violations. The Sub-Commission's previous session had also been marked by fruitful discussions on substantive and procedural aspects of its work and role. The Sub-Commission had acknowledged the concerns expressed about the broadened interpretation of its mandate, which had resulted in an increasing politicization of its debates, and in an increase in the number of resolutions adopted on human rights abuses. Perhaps inevitably, the focus of its work had become blurred, with some duplication of the work of the Commission.

179. It had been averred that that broad interpretation was a result of the broad terms of the mandate itself. In that case, the Commission should consider further defining the work of the Sub-Commission, emphasizing the priority to be assigned to standard-setting and the need for studies and reports to be prepared on time, and with the widest possible participation of members. The rationalization of work thereby achieved would enable members to devote sufficient time to study and discussion of the reports. Guidelines to focus the Sub-Commission's work, and constant dialogue, would also avoid duplication of the Commission's work, and would limit, if not eliminate, politicization of discussions in the Sub-Commission.

180. On the question of politicization, vigilance on the part of the non-governmental organizations could greatly enhance the work of human rights bodies in the United Nations system. The NGOs must take care to ensure that they were not used as the mouthpieces of political opposition groups in countries whose human rights situations they monitored. That could lead only to the validity of their contributions being undermined.

181. Turning to the draft resolution on the footnote to rule 59 of the rules of procedure of the functional commissions of the Economic and Social Council contained in document E/CN.4/1991/2 (chapter 1, section A. II, p. 3), she said that her delegation had serious reservations on the call it contained for a vote by secret ballot on resolutions pertaining to allegations of violations of human rights in countries. First of all, it seemed to her delegation that that "footnote" was more than just explanatory, and was in effect an amendment of rule 59. Furthermore, as the Legal Counsel of the United Nations had pointed out, it would render non-exercisable the right of explanation of vote under rule 60. As formulated, it would in fact require a vote by secret

ballot on all resolutions pertaining to all country situations, including the 1503 confidential procedure. While appreciating that the draft resolution was intended to protect the independence of the Sub-Commission's members, her delegation submitted that it might erode the very independence it was intended to protect. Members of the Sub-Commission had themselves admitted that a vote by secret ballot would reduce accountability. It would also affect the transparency of deliberations. In such circumstances, independence would be difficult to project. Moreover, voting by secret ballot on country situations could affect Governments' choice of nominees. With the guarantee that experts would act independently removed, Governments could ensure that the experts nominated were sympathetic to them. Perhaps it might be more effective to remind Governments that the independence of experts must be respected and guaranteed. Should the expert suffer retribution for independence of thought, as had apparently occurred in one case, the Government involved would then be open to censure, which would not be the case if a secret ballot procedure was adopted. However, the possibility of voting by secret ballot in extremely sensitive cases must not be entirely ruled out. That possibility was implied in the rules of procedure, and could be used by the Sub-Commission whenever deemed necessary.

182. Ms. WOLTERS (Observer for the Netherlands) said that her delegation supported much of the work done by the experts of the Sub-Commission, but believed that improvements were needed. At the forty-second session, members of the Sub-Commission had had to cope with an overloaded agenda, with too little time to discuss items among themselves once all other participants had spoken, and with so many reports to consider that it had been impossible to give them the attention they merited.

183. Where the commissioning of new studies was concerned, the guidelines laid down in the Commission's resolution 1990/64 should be more strictly applied. While her delegation was aware of the importance of issues such as the environment, it believed that the Sub-Commission should concentrate on what it could do best, rather than devoting scarce time to issues dealt with in other, specialized international forums.

184. On the other hand, the Sub-Commission itself seemed to be increasingly aware of the need for a change in its methods of work. The working group which had studied ways and means of rationalizing item 6 had made a good start in that regard. Meanwhile, non-governmental organizations should exercise restraint when addressing the Sub-Commission, and should address the contents of the various studies done by the Sub-Commission.

185. The suspension of rule 59 to allow for voting by secret ballot on country situations was commendable, in that it might further enhance the independent status of the experts.

186. Turning to the report of the Sub-Commission, she said that her delegation welcomed the revitalization of the Working Group on Contemporary Forms of Slavery, which had resulted in some valuable recommendations to the Commission. One such recommendation had been to appoint a special rapporteur on child prostitution. The Netherlands was especially interested in the theme of prevention of traffic in persons and of the exploitation of the prostitution of others, a theme due to come up in the Working Group in the current year, and one which otherwise received too little attention in the Commission. The elimination of the traffic in persons was an issue to which

the Netherlands gave priority in international forums concerned with human rights. The underlying objectives of its policy on the issue were: elimination of the traffic in persons and enforced prostitution; promotion of the co-ordination of international measures on the issue, inter alia within the United Nations; and monitoring compliance with the relevant international treaties. In the context of the meeting of the Working Group in 1991, the Netherlands Minister for Foreign Affairs had requested his Advisory Committee on Human Rights and Foreign Policy to draw up an advisory report, which was expected to contain its opinion on the most effective method of monitoring compliance with the United Nations conventions on the elimination of slavery. The Advisory Committee would also study the question of co-ordination within the United Nations of the activities of various agencies concerned with aspects of combating traffic in persons. The Committee would use as its starting point the Study by the Secretary-General published in document E/CN.4/Sub.2/1989/37.

187. Her delegation welcomed the work done by Mr. Chernichenko and Mr. Treat on the subject of a right to a fair trial, and had high hopes for their forthcoming report on the subject. The involvement of the United Nations Secretariat in Vienna could only enhance the practical value of that study.

188. The Working Group on Detention could be cited as an example of how the Sub-Commission should work. Experts, non-governmental organizations and Governments co-operated in developing new, detailed standards in that field, and gave more attention to the implementation of those standards. The annual review of developments concerning the human rights of persons subjected to any form of detention or imprisonment was an example of that pragmatic approach. The suggestion that a member of the Working Group should be asked each year to report on trends and situations was a valuable contribution to furthering implementation of international standards in that field.

189. Although not a binding instrument, the declaration on the protection of all persons from enforced or involuntary disappearances would bring political pressure to bear on Governments and encourage relatives of disappeared persons in their struggle with indifferent authorities. However, it was too often the case that perpetrators were not prosecuted. Would it not be advisable for the Sub-Commission to take up the subject of impunity for study?

190. Her delegation attached great importance to the advisory service and technical assistance programmes available in the field of the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers. A further strengthening and streamlining of those programmes could make them more effective, and the decision by the Sub-Commission contained in its resolution 1990/23 to entrust Mr. Joinet with the task of drawing up a system-wide analysis of existing activities and setting forth guidelines and criteria to be taken into account in the provision of those services, was thus to be welcomed. She noted that the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders had declared provision of technical co-operation to member States (at their request) one of the three priorities the Secretary-General should set when implementing the comprehensive programme of work devised by the Congress.

191. In its resolution 1990/13, the Sub-Commission had called urgently upon the Government of Iraq to allow all foreign nationals to leave Iraq and Kuwait immediately, and had further recommended the Commission to study the evolution of the situaiton of human rights and fundamental freedoms in Iraq at its current session. Unfortunately, that decision had probably been facilitated by Iraq's policies of aggression. It must be realized that Iraq's domestic policies of repression had already warranted United Nations involvement in the field of human rights at a much earlier date. None the less, her delegation recognized that the Sub-Commission had played the role incumbent on it, by taking up a new country situation upon which the Commission itself had been unable to take action for years.

192. Mr. STEEL (Observer for the United Kingdom) said that, although the independent status of the members of the Sub-Commission made their relationship with the Commission rather difficult to define, his Government had always regarded it as a partnership. Over the years, the Sub-Commission had done the groundwork for new international standards, prepared perceptive studies and contributed in a general way to the protection and promotion of human rights within the United Nations system. The partnership had benefited both sides.

193. At the previous session of the Commission, a number of delegations, including his own, had commented on the Sub-Commission's methods of work. The then Chairman of the Commission, Mrs. Quisumbing, had spoken before the Sub-Commission at its forty-second session in September 1990, voicing the concerns of many of the Commission's members. Those concerns included the overloading of the Sub-Commission's agenda, the large number of studies in progress, and the formidable number of resolutions passed on to the Commission for action or consideration. His delegation had been glad to hear the comments made by the current Chairman of the Sub-Commission, Mr. Türk, on its reception of Mrs. Quisumbing's remarks.

194. His delegation welcomed the proposal that the Sub-Commission as a whole should have a proper opportunity to consider and comment on reports at all stages of their preparation, particularly the early stages, when a rigorous debate of the feasibility or desirability of a study during the presentation of a preliminary report was essential to ensure a better ordering of priorities and a more efficient timetable of work. Once an expert had been entrusted with a study, one or more other members might be called upon to "shadow" him or her and comment on the report in detail. Such a practice seemed more feasible than expecting all members to comment substantially on every report, unless fewer reports were prepared and they were circulated well in advance of the Sub-Commission's session.

195. The Sub-Commission had established a sessional working group to prepare an overview and analysis of suggestions on how the Sub-Commission might better discharge its responsibilities in dealing with violations under item 6 of its agenda. The Working Group had had several useful and constructive meetings but, given the complexity of the reforms it was called upon to make, it was not surprising that it had not yet reached any final conclusions. His delegation hoped that substantive proposals would be forthcoming at the next session of the Sub-Commission.

196. Also in respect of item 6, the Sub-Commission had decided to suspend rule 59 of the rules of procedure of the functional commissions of the Economic and Social Council to allow for a secret ballot on draft resolutions under that item. In resolution 1990/4, it had asked the Economic and Social Council, through the Commission on Human Rights, to add a footnote to rule 59 to that effect. His delegation supported the Sub-Commission's decision and had not been convinced by the arguments against it which, he felt, expressed concerns which were not well founded.

197. The Sub-Commission had also considered how it should organize its debate under the various items of the agenda. A more disciplined and focused approach on the part of speakers would lead to a clear exposition of views and a better use of the time available. Such an approach need not inhibit the right of experts to intervene as they saw fit, or reduce the essential contribution of non-governmental organizations. He hoped that the debate between the Sub-Commission and the Commission on all the issues he had mentioned would be continued through meetings between the bureaux of the two bodies.

198. Turning to the substantive work of the Sub-Commission over the past year, he said that his delegation had particularly appreciated the progress report on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities, prepared by Mr. Eide (E/CN.4/Sub.2/1990/46). The final study would emphasize the handling of situations involving minorities and examine national experiences in order to identify potentially useful approaches - a method which would usefully complement the Commission's own work on a draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities. His delegation also wished to commend the work of Mr. Chernichenko and Mr. Treat on the right to a fair trial (E/CN.4/Sub.2/1990/34). Although the work was still at an early stage, it should contribute significantly to an important but complex area of human rights. It was also an example of fruitful co-operation between experts from countries with very different legal systems and traditions.

199. One of the Sub-Commission's most important tasks was the consideration of communications under Economic and Social Council resolution 1503 (XLVIII). At the previous session of the Commission, his delegation had expressed its concern about the decision by the Sub-Commission's Working Group on Communications that it would not consider any communication unless the Government in question had had five months in which to submit a reply, counted from the day on which the communication had been transmitted to that Government. His delegation had considered the five-month period too long, and was happy to see that in decision 1990/112 the Sub-Commission had now reduced it to three months, which allowed Governments enough time to investigate the allegations thoroughly in all but exceptional cases.

200. Mr. WERESZCZYNSKI (Observer for Poland) said that his delegation wished to commend the Sub-Commission particularly on its adoption of the draft declaration on the protection of all persons from enforced or involuntary disappearances (E/CN.4/Sub.2/1990/32, annex) and on the work done by Mr. Joinet on the practice of administrative detention (E/CN.4/Sub.2/1990/29).

201. Individual freedom and safety were the very essence of human rights and fundamental freedoms, and were enshrined in the major legal instruments on civil and political rights. Nevertheless, arbitrary or illegal detention was still one of the most frequent abuses of human rights in a number of countries

throughout the world. His delegation therefore supported the Sub-Commission's proposal to create a supervisory mechanism on the question of arbitrary or illegal detention. A special rapporteur would be more effective than a working group, since he would be able to issue urgent appeals in respect of various categories of arbitrary or unauthorized detention. The special rapporteur's mandate should include all forms of detention, in other words any kind of administrative or judicial detention which contravened national or international law.

202. Ms. AHIABA (Grand Council of the Crees), speaking also on behalf of the Four Directions Council, said that the two organizations welcomed the Commission's draft resolution on the International Year for the World's Indigenous Peoples in 1993 (E/CN.4/1991/L.62). In particular, they appreciated the large number of sponsors of the draft resolution and the initiative taken by Colombia at meetings of the Economic and Social Council and the General Assembly to respect the wishes and aspirations of the indigenous peoples concerned as far as possible.

203. Several delegations at the current session had taken steps to ensure that indigenous non-governmental organizations had been consulted during the preparation of the draft resolution. Those developments were a welcome improvement in the relations between indigenous peoples and States: it would be a real achievement if the International Year created a sound working relationship between Governments and indigenous peoples, both at the national level and in international bodies, such as the Commission.

204. Nevertheless, the wording of the draft resolution was a compromise which did not fully represent the viewpoint of the indigenous peoples or their aspirations for the International Year, and she hoped that the remaining concerns would be met as 1993 approached.

205. Although the observer delegation of Spain was a sponsor of the draft resolution, her organization was concerned that that country planned to celebrate the five hundredth anniversary of the discovery and colonization of the Americas in 1992. For indigenous peoples, the anniversary was a grotesque reminder of the genocide of the native inhabitants of the Americas, and she called upon all Governments to ensure that any celebrations reflected the abhorrent nature of the conquest and the extermination of indigenous peoples.

206. Even today, the memory of that cruelty was constantly refreshed by new atrocities, with indigenous lands being confiscated, flooded and deforested and indigenous people's human rights continually abused. One recent example was the still unresolved conflict between the Canadian Government and the Mohawk people, which had flared up in the summer of 1990. The situation of the world's indigenous peoples - the denial of their right to self-determination, the abuse of their human rights and the destruction of their environment through reckless and irresponsible development - should be a permanent item on the Commission's agenda. The declaration to be issued during the International Year should show that the United Nations acknowledged those issues.

207. The session of the Sub-Commission's Working Group on Indigenous Peoples in Geneva in July 1990 had been marked by a more focused and concrete participation in the drafting of the universal declaration of indigenous rights both by Governments and by indigenous peoples themselves. However,

the lack of Spanish interpretation had limited the contribution of indigenous representatives from Southern and Central America, and her organization felt that the Working Group had tried to move too fast in establishing three drafting groups, meeting simultaneously. More progress would be made if the entire Working Group met at the same time and if it had interpretation into English and Spanish, at least.

208. Nevertheless, her organization had approved the amendments to the draft universal declaration, and wished to congratulate the Chairman/Rapporteur of the Working Group, Ms. Daes, on her thoughtful and important work. It supported the proposal that the Working Group should be given extra time to complete the draft universal declaration before the next session of the Sub-Commission.

209. In decision 1990/26, the Sub-Commission had called upon the Secretary-General to organize a regional training course in Latin America on the United Nations, human rights and indigenous peoples. In her organization's opinion, such a training course was long overdue; North American organizations had always been over-represented in United Nations work in that area, chiefly because of the cost of travelling to United Nations meetings and the greater availability of information on the United Nations system in North America. A training course would promote a better balance of participation by various indigenous groups in the Working Group's activities, and would make that participation more effective and constructive. Incidentally, the report of the 1989 seminar on indigenous peoples had never been published in Spanish, which made it inaccessible to most indigenous peoples in the Americas.

210. The United Nations had increased its activities to promote participation in decision-making by indigenous peoples. By adopting the draft resolution on the International Year of the World's Indigenous Peoples (E/CN.4/1991/L.62), the Commission would contribute to that positive trend.

211. Mr. LITTMAN (World Union for Progressive Judaism) said that a recent article in Le Monde on the sale of chemical and bacteriological weapons and expertise to Iraq had reminded him that the subject had barely been mentioned at all at the Sub-Commission's last session, although it was clearly covered by item 13 of the agenda, on human rights and scientific and technological developments. While issues such as the transport and disposal of hazardous waste had received considerable attention, there had been no reference to the need to eliminate chemical weapons, even when President Saddam Hussein of Iraq had used chemical weapons against his own Kurdish population in 1988, or had threatened to destroy half of Israel after the invasion of Kuwait. His organization had been the only one to mention the problem of chemical weapons during the Sub-Commission's session. He had suggested that a special rapporteur should be appointed to list all national and multinational companies which had been, or still were, engaged in trade in poison gas and of the States which refused to control their activities.

212. In the 1980s, Iraq had purchased over $50 billion worth of modern weaponry. Most of the basic army equipment had come from the USSR, but the most sophisticated weaponry had come from the West, with France providing weapons worth $15 billion. If the price was right, Saddam Hussein could get anything he wanted from his foreign friends, even if he never actually paid for the equipment.

213. Although Iraq had first used poison gas against the Islamic Republic of Iran as long ago as 1984, neither the Sub-Commission nor the Commission itself had been willing or able to act. Controls over ballistic missile technology had only been achieved when the United States of America and six Western Governments had signed the Missile Technology Control Régime in April 1987. Successful lobbying by Iraq and its third world allies had prevented the Conference on Security and Co-operation in Europe, meeting in Paris in January 1989, from agreeing to ban the production and stockpiling of chemical weapons. By then it was too late: Iraq knew how to get its supplies secretly, and had even persuaded Western banks to provide fraudulent finance for poison gas, ballistic missiles and nuclear technology purchases, although those loans were rarely repaid. Iraq's supporters had blocked any serious discussion of the issue within the Sub-Commission until Iraq had invaded Kuwait in August 1990.

214. Iraq's links with Western suppliers of poison gas technology had been well known since 1984 but nothing had been done to control the trade. A report in his possession showed that 207 companies were selling Iraq supplies for its unconventional weapons programmes; 86 of them were in Germany and others were based in the United States of America, the United Kingdom, Austria, France, Italy and Switzerland. Companies from a total of 21 States were involved. The report listed the names of firms, their countries, the type of weapon or equipment sold and the source of the information.

215. There was still time for the Commission to pass a simple resolution, without a vote, condemning Iraq for its use of illegal chemical weapons and appointing - or recommending that the Sub-Commission should appoint - a special rapporteur to provide a regular report listing companies which sold weapons to Iraq, along the lines of Mr. Khalifa's annual report on trade with South Africa. Indeed, if the necessary reforms were adopted in South Africa soon, Mr. Khalifa might be able to discontinue his study of South Africa and turn his attention to Iraq instead. Perhaps the representatives of Germany, Austria and other Western Governments concerned by the activities of their companies might agree to sponsor such an initiative, and the Group of 77 would surely support it as well.

216. Mr. TEITELBAUM (American Association of Jurists) said that his organization shared the Commission's concerns about the working methods of the Sub-Commission. It saw the Sub-Commission as a committee of "wise men" which drew up human rights standards, considered situations which violated those rights and suggested ways of putting an end to them. It must be totally independent, taking no account of the opinion of foreign ministries or Governments and acutely sensitive to the outcry from the victims. In practice, however, the Sub-Commission fell short of that ideal.

217. One problem was the proliferation of studies. Some studies contributed little that was new, compared with earlier studies on the same subject, or went beyond the competence of the Sub-Commission and dealt with matters more suited to other specialized bodies. Other studies had no clearly defined aim. All studies should have clearly defined objectives, should not be repetitive, and should fall within the competence of the Sub-Commission.

218. For example, Mr. Türk's progress report on the realization of economic, social and cultural rights (E/CN.4/Sub.2/1990/19), although of undoubted quality, had devoted many pages to social indicators for measuring the degree of development in various countries, which was surely the province of technical agencies such as the United Nations Statistical Office, the United Nations Research Institute for Social Development and the World Bank.

219. The Sub-Commission had been discussing its methods and organization of work for some years now, but without substantial progress. It should take into account the proposals contained in the report by the Working Group of the NGO Special Committee on Human Rights, dated 28 November 1990, on the activities of the Commission and the Sub-Commission.

220. In recent years, the Sub-Commission had shown an increasing tendency to hold private meetings and secret ballots on certain issues. His organization considered that the practice was harmful to the credibility of the Sub-Commission, destroyed the transparency which its work should have, and shielded its members from public scrutiny. Publicizing its deliberations would unquestionably deter violations of human rights and do much to educate the peoples of the world.

221. It had been argued that the practice of secret ballots was beneficial because it allowed experts to vote according to their consciences. In fact, it sometimes happened that the opinions expressed by experts during the debate did not correspond with the subsequent vote - in other words, some experts expressed one opinion during the debate, but voted differently when protected by the secrecy of the ballot. If the practice became more widespread, the Commission would not know whether to believe the opinions expressed by members of the Sub-Commission in their debates or the results of the vote.

222. It had been argued that voting by secret ballot prevented Governments exerting pressure on their nationals and thus increased members' independence. As a result of government pressure, a member might "lose his post" or his behaviour might lead to "consequences for his career". Such considerations only applied to members who were officials of their Governments; the answer was not to introduce voting by secret ballot, but to appoint experts who were not government employees.

223. Alternatively, the references to an expert losing his post or suffering consequences for his career might have been meant to refer to an expert losing his place on the Sub-Commission because the Government refused to renominate him. Members should bear in mind that membership of the Sub-Commission was not a "post" or a "career", but a task of great responsibility which was, by its very nature, a temporary one. Moreover, if a member of the Sub-Commission displeased his own Government, there was no reason why another country or group of countries should not submit his candidature if they wished.

224. In any case, in the present international situation, experts enjoyed the protection and immediate solidarity of the Sub-Commission and the rest of the United Nations system; their outspokenness would not jeopardize their privileges and immunities or their personal safety, as had been the case in the past. Any risk run by such an expert was infinitesimal when compared with the dangers besetting thousands of persons who defended human rights throughout the world, and who anonymously risked their freedom and their lives without protection of any kind.

225. In conclusion, his organization called upon the Commission to maintain the Sub-Commission's dual function of standard-setting and considering specific situations of human rights violations. The Sub-Commission should carry out studies with precise objectives within its sphere of competence, which would make a genuine contribution to the enforcement and advancement of human rights. The Sub-Commission should continue its dialogue with non-governmental organizations in order to improve its methods of work. The Commission should not call upon the Economic and Social Council to change the rules of procedure in a way which would allow a greater use of secret ballots, and it should recommend that the Sub-Commission should keep closed meetings to a minimum.

226. He called upon the Commission to adopt a resolution stating that membership of the Sub-Commission was incompatible with employment by the member's own Government, except for the case of members of the judiciary or parliament, teachers or researchers. Further, the Commission should decide that candidates for membership of the Sub-Commission would not be considered if they were employees of their Governments, except in the cases outlined above.

227. Mr. CONDORI (Indian Council of South America) said that 500 years after the "discovery of the new world" in 1492, in reality the violent invasion of the Americas, indigenous peoples continued to seek to obtain their right to land, dignity, national identity and fundamental freedoms. Following the conquest, a brutal colonial system had been established that had brought about the destruction of indigenous civilizations, the mass extermination of entire populations, torture and slavery. The large-scale preparations and resources invested by Governments, especially Spain, to celebrate the event was an insult to the dignity of the indigenous peoples.

228. He drew the Commission's attention to the unprecedented march by 30,000 Indians to the capital of Bolivia in September 1990 to demand their right to land, to the ownership and use of their natural resources, to dignity and to legal protection against mistreatment and harassment by cattle raisers, timber companies and gold-diggers, who were pillaging the natural resources and destroying nature. The Bolivian Government had signed decrees recognizing the territory of the Sirionó people, proclaiming the Chimanes region to be a territory of the Indian people and implementing a draft law on the protection of ancestral lands and the way of life of Indian people in eastern Bolivia, but it had still not demonstrated a readiness to implement those provisions or other legal instruments on the rights of indigenous peoples.

229. The international community must ensure implementation of international human rights instruments for the defence of the human rights of indigenous peoples and their right to self-determination. In that context, he welcomed the work of the Sub-Commission on a draft universal declaration of indigenous rights. The United Nations must declare 1992 the "International Year of Resistance and Struggle of Indigenous Peoples and Nations for their Dignity, their National Identity and their Fundamental Rights", to be celebrated on the symbolic date of 12 October.

230. Mr. DEER (International Work Group for Indigenous Affairs) commended the Sub-Commission on the progress made during its forty-second session on the situation of indigenous peoples and was encouraged by the increase in time allowed to the Working Group on Indigenous Peoples for preparing the draft declaration on indigenous rights; it was to be hoped that that pattern would be repeated at the forty-third session, but with improved services.

231. He was pleased by the support given to Sub-Commission decision 1990/29 on proclaiming 1993 an international year for the promotion of indigenous rights, although the term "peoples" should be used rather than the singular "people", so as to reflect the diversity of indigenous cultures and societies.

232. He was heartened that the Sub-Commission had shown interest in the conflict between the Canadian authorities and the Mohawk people over the issue of land. The statement by the Chairman calling for a peaceful and negotiated settlement to the crisis and requesting the Canadian Government to keep the Sub-Commission and the Secretary-General informed about the ongoing situation had had a direct impact on Canada's efforts to resolve the situation peacefully. In that context, he expressed appreciation to the Ambassador of Canada to the United Nations, Mr. Shannon, for his willingness to co-operate with the Sub-Commission.

233. He drew the Commission's attention to the severe harassment of Mohawks by the Canadian police, which had resulted in injuries and arrests. The Mohawk economy was crippled because of the occupation by the Canadian armed forces. Unemployment had increased dramatically in a segment of the Canadian population that had already had the highest rates. Scores of Mohawks were facing trial because of their efforts to defend their territory. Public statements by the Prime Minister of Canada and the Premier of Quebec calling the Mohawks criminals had made it impossible for the accused to have a fair trial. Moreover, the Mohawks did not have the financial resources needed to secure the best possible legal defence. Despite overwhelming evidence of human rights violations and abuse of power by the police, there had been no public inquiry.

234. The current crisis was but one instance of a problem faced by all indigenous peoples, the issue of land. Five hundred years after Columbus, Canada still invoked the right of discovery to justify its ownership of the land in the absence of any agreements with the indigenous nations concerned, the Mohawk and the Algonquin. Unless ways were found to protect indigenous lands, the risk of confrontations remained.

235. Mr. Bernales Ballesteros (Peru) took the Chair.

236. Mrs. SCHREIBER (International Abolitionist Federation) was pleased that Governments had expressed their concern about the terrible consequences that prostitution, pornography and sexual abuse had on the life and development of children. Such acts must be regarded as crimes against humanity. The sale of children, for example, did not merely involve a few individuals, but was part of an international system manipulated by criminal elements that the international community must combat with the same energy as drug trafficking.

237. The International Abolitionist Federation had repeatedly drawn the attention of the Working Group on Contemporary Forms of Slavery to the shortcomings of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others with regard to its formulation of the obligations of States, its content and its attitude towards the problem of prostitution. The provisions of the Convention no longer responded to contemporary forms of such slavery, in particular sexual tourism, prostitution at military bases, the situation of migrant women and displaced refugee women, the sale of women in sham marriages and forced disappearances. The Convention's provisions had little binding force, and inter-State co-ordination was long and involved. The Convention did not invoke the responsibility of the client, and women subjected to prostitution were treated more like criminals than victims. She was pleased that the Working Group on Contemporary Forms of Slavery had expressed concern about the mechanism and the applicability of the Convention and its intention to consider that problem at its next session. In that context, document E/CN.4/Sub.2/1989/37 contained an excellent study by the Secretary-General which criticized the mechanisms for implementing the Convention. Supplementary protocols to the Convention must be drafted to remedy the situation.

238. The Secretary-General should authorize the appointment in the Centre for Human Rights of a full-time professional with the sole responsibility of co-ordinating activities to eliminate slavery, prostitution, pornography and all other forms of sexual exploitation, in conjunction with other United Nations bodies, international organizations and NGOs. The Commission should proclaim 1991-2001 the decade for the elimination of all forms of exploitation of men, women and children subjected to slavery, the most odious example of which was sexual slavery.

239. Ms. GUZMAN (Latin American Federation of Associations of Relatives of Disappeared Detainees) underscored the Sub-Commission's important role as a complementary body of the Commission. The co-ordination between those two bodies must be improved so that the problems they addressed could be resolved more rapidly. Unfortunately, the Commission did not always act upon the recommendations of the Sub-Commission. For example, although the Sub-Commission had spent three years on a draft declaration on the protection of all persons from enforced or involuntary disappearances, approving it at its forty-second session and recommending to the Economic and Social Council that it adopt and submit it for final consideration and adoption to the General Assembly at its forty-sixth session, certain States in the Commission had called for a more detailed study of the draft declaration.

240. The Sub-Commission and its various working groups must be more receptive to proposals by NGOs for considering subjects that could be treated immediately. In August 1990, for example, her organization had requested the Working Group on Detention to give priority to a study of the question of impunity, which was directly related to the administration of justice, detention, forced disappearances, summary executions, etc.

241. Ms. GRAF (International League for the Rights and the Liberation of Peoples) supported Sub-Commission resolution 1990/17 on the human rights dimensions of population transfer, including the implantation of settlers and settlements. Population transfer not only infringed individual rights, but frequently constituted a violation of the right to self-determination of the peoples affected. Many peoples, in particular indigenous ones, had an

intimate cultural, political, social and economic relationship with a specific territory, and involuntary relocation was often accompanied by cultural collapse. Government-sponsored migration and other forms of implantation of settlers were also a threat to the cultural, political, social and economic integrity of the peoples into whose territory the settlers moved.

242. The Commission should commend the Sub-Commission's decision to discuss population transfer at its future sessions, and it should recommend that the Sub-Commission take into account such studies on the rights of peoples as the ongoing work of the United Nations Educational, Scientific and Cultural Organization and highlight the threat presented by population transfer to collective as well as to individual rights.

243. Mr. CHRISTIAN (Liberation) wished to place on record his organization's appreciation of the Sub-Commission's continued concern with the human rights situation in East Timor, as expressed in resolution 1990/15 and the Secretariat note on the situation in East Timor (E/CN.4/1991/37) pursuant to paragraph 4 of that resolution. It noted with satisfaction that a number of member States had referred to the human rights situation in East Timor. The highly critical remarks made by Luxembourg, speaking on behalf of the European Economic Community, were not unrelated to the visit in October 1990 by diplomats to East Timor, at a time when the human rights situation there had taken a decided turn for the worse.

244. In its right of reply under agenda item 12, the delegation of Indonesia had demanded that NGOs investigating the human rights situation in East Timor should demonstrate by words and deeds that they would examine the situation objectively and stated that it would be inconceivable for anyone who had made critical remarks about human rights in East Timor to be allowed access. The Commission must insist that Indonesia grant unconditional access to human rights organizations to examine the many reports of arrests, torture, disappearances and summary executions. Otherwise, years of efforts by the Sub-Commission to have an independent investigation of the situation in East Timor would have been in vain.

245. At the forty-second session of the Sub-Commission, several experts and NGOs had expressed their concern at the deteriorating human rights situation in Sri Lanka, and under agenda item 6, 18 NGOs had urged that action should be taken on reports of gross and systematic human rights violations in Sri Lanka and that steps be initiated to satisfy the legitimate aspirations of the Tamil people. The Commission must express its concern about the large-scale human rights violations in Sri Lanka and call upon the Government of Sri Lanka to declare a cease-fire and enter into negotiations with the conflicting party in order to settle the Tamil national problem.

246. Mr. TOTSUKA (International Educational Development, Inc.) said that the report by Mr. Joinet on the practice of administrative detention (E/CN.4/Sub.2/1990/29 and Add.1) had cast light on a form of police station detention in Japan known as daiyo-kangoku under which criminal suspects, when they were held prior to indictment, were detained under police custody in police-station cells, for periods generally lasting 20 days. That amounted to a form of administrative detention in violation of international standards.

247. To compound the problem, suspects so detained were subjected to police interrogation and were not entitled to court-appointed attorneys; when they could engage an attorney, he was frequently allowed to see his client for only one or two 15-minute periods during the administrative detention and never during the interrogation itself. As pointed out in the report, that form of administrative detention led to "confessions" that would not pass scrutiny under international standards.

248. According to a 1989 study by the Association of Humanitarian Lawyers, an affiliate of his organization, and the International Federation of Human Rights, Japan annually violated the rights of some 100,000 detainees under articles 9 and 14 of the International Covenant on Civil and Political Rights and a number of other provisions of international law. A report released by Amnesty International on January 1991 had corroborated those findings and had made essentially the same recommendations to the Japanese Government.

249. He endorsed Mr. Joinet's recommendation that the Commission should appoint a special rapporteur on administrative detention, who could work with Governments such as Japan to remedy the problems associated with the detention system described above, especially since, in his statement to the Commission on 26 February 1991, the representative of Japan had stressed his Government's positive attitude towards the protection of human rights.

250. The Commission should act on all the recommendations made by Mr. Joinet or request the Sub-Commission to elaborate them further as a matter of highest priority.